

Senate Education Committee

Ava Hawkes 271-4151

HB 282, relative to a private school that is approved as a tuition program.

Hearing Date: April 27, 2021

Time Opened: 9:04 a.m.

Time Closed: 9:50 a.m.

Members of the Committee Present: Senators Ward, Hennessey, Ricciardi, Kahn and Prentiss

Members of the Committee Absent : None

Bill Analysis: This bill deletes the requirement that a private school be nonsectarian in order to be approved as a school tuition program.

Sponsors:

Rep. Ladd

Rep. McGuire

Rep. Cordelli

Rep. Boehm

Rep. Osborne

Rep. Baldasaro

Rep. Allard

Rep. Hill

Rep. Stapleton

Sen. Reagan

Sen. Ward

Sen. Hennessey

Who supports the bill: Senator Ruth Ward, Senator John Reagan, Representative Rick Ladd, Representative Glenn Cordelli, Representative Carol McGuire, Representative Al Baldasaro, Representative Deborah Hobson, Representative Bob Lynn, Nicholas Thomas, Elliot Axelman, Eric Pauer, Bob Dunn, Alexandra Mennella, Katherine Shea, Sarah Scott, Alvin See, Kirby West, Jody Underwood

Who opposes the bill: 100 people signed up in opposition to this bill. Full sign-in sheet available upon request.

Who is neutral on the bill: None.

Summary of testimony presented:

Representative Rick Ladd - Grafton, District 4

- Representative Ladd introduced HB 282.
- He is a retired principal and schoolteacher.
- This bill deals with the approval of tuition programming.
- Many different structures and organizations throughout the state.
- When grades are not available in a specific structure, there is a need for an option to tuition these students out into another education setting.

- This bill modifies current law and allows school districts to contract with approved private schools.
- This bill, as a result of the *Espinoza v. Montana Department of Revenue* supreme court case from last year, opens contracts up to all private schools, including religious schools.
- This bill changes how parents are involved in the process and provides choice when it comes to their child being assigned to a school level not in their district.
- Currently, this responsibility is of the sending school district.
- This statutory change allows the parent choice of what approved school their child goes to.
- For instance, Piermont has tuition agreements with an academy in VT and elsewhere in NH.
- These approved schools have exceptional programs, including CTE centers.
- We are not required to provide transportation for tuition students at high school level.
- The condition in this bill is that it has to be tuition to an approved school.
- Approved school must follow statutory language found in RSA 193-E:3-b and 2-a, 1-a, 1-b.
 - They must adhere to the same accountability standards and report to NHDOE annually.
- This bill allows for the best choice based on a child's physical, emotional, etc. needs. The best person to know that is the parent.
- Senator Kahn asked Representative Ladd if this bill is specific to a district where grade levels needed are not available, therefore, an assignment outside of their district is needed.
 - Representative Ladd said yes, that is correct.
 - Very similar to what VT and ME already does.
 - This tuition program has been in place for a number of years.
 - The only real change is to include private, religious schools.
- Senator Kahn asked Representative Ladd about the supreme court case referenced in his testimony. He asked if Representative Ladd agrees that, in the case, they ruled on tuition waivers and the eligibility for them.
 - Representative Ladd said they allowed the money to follow a child to a religious school. You can't exclude based on religion as it would be discriminatory.
- Senator Kahn noted his why he disagrees. This supreme court case fails to say the teaching of a religious doctrine is in violation of the separation of church and state. He asked Representative Ladd if he agrees with that.
 - Representative Ladd said yes, he does. We should not be indoctrinating with religious doctrines.
 - Religious schools provide an approved education, according to our state statutes.

- In Los Angeles, there are 70,000 kids who go to Catholic schools. 70% of those schools are made up of various cultural backgrounds and color.
- We want a student going to a school which is the best fit for them and where they'll get the best education.
- Senator Kahn asked Representative Ladd if by removing the word "nonsectarian" from statute, does that make schools who make religious education part of their curriculum, eligible for district agreements.
 - Representative Ladd said he can't get into what happens in some of these schools.
 - The schools which are approved for tuitioning purposes must meet the same substantive criteria, i.e. the same calendars and graduation requirements.
 - He does not believe religion is integrated in the curriculum. However, there may be a cross on the wall, but not integrated into curriculum.
- Senator Prentiss asked Representative Ladd what, overall, is changing through this bill with these tuitioning arrangements. As this already exists, is the overall intent to eliminate nonsectarian and provide parents' choice.
 - Yes, parents choose where their child is assigned.
- Senator Prentiss asked Representative Ladd if these arrangements currently don't cover any and all religious schools, regardless of faith.
 - Representative Ladd said yes.
- Senator Prentiss asked if this bill would allow religious schools to be a part of that tuitioning choice.
 - Representative Ladd said it would allow tuition money to flow to a religious school. We should not deny a child an opportunity based on the fact that it is a religious school.
- Senator Prentiss asked Representative Ladd if we use public education dollars to fund religious education currently; EFAs are a whole different conversation.
 - Representative Ladd said he does not know, a question better suited for NHDOE.
 - Public money, on a post-secondary level, already flows to religious institutions, i.e. Notre Dame.
- Senator Prentiss noted that her parents paid for a religious education for her. This bill seems to be another way to nip at the edges of using public money for religious education. The cross border we currently have works very well.

Representative Glenn Cordelli – Carroll, District 4

- Supports this bill.
- This bill is required in order for NH to be in compliance with the Espinoza v. Montana Department of Revenue supreme court decision.
- If funds are going to a non-religious private school to exclude religious private schools, it is unconstitutional and in defiance of the First Amendment.

- Lines 17-18 of the bill, which allows each child’s parents to choose from an approved tuition program, is current practice.
- He referenced a letter from earlier this month from SAU6, where this agreement offered services and enter into tuition agreements.
- The SAU6 school board is currently working on agreements with additional districts.
- They are also working on a form where parents can express where they’d like to send their children in the fall.
- There is an upcoming school fair in May which schools in the area will attend and showcase their school’s opportunities.
- RSA 189:49, related to child benefit services, is the statute which notes school districts can provide services to non-public schools including money for nurse services, textbooks, etc.
- Hampton is one town that he knows of that does this. Each year, they have a ballot warrant article to provide funds to their local Catholic school under statute.
- On an annual basis, \$40,000-45,000 is sent to St. Mary’s Catholic School by Hampton.
- Senator Hennessey asked Representative Cordelli if some of these schools, that could qualify through this bill, would be less expensive and closer in distance for students to attend.
 - Representative Cordelli said definitely. For example, a school in Croydon, where students have requested to attend, the tuition is lower.
- Senator Prentiss asked Representative Cordelli for the statute he referenced in his testimony.
 - Representative Cordelli said RSA 189:49, related to child benefit services.
- Senator Prentiss asked Representative Cordelli if this could pay tuition or is it a lump sum paid to a school.
 - Representative Cordelli said it is a lump sum, authorized by voters, used for allowable services noted in RSA 189:49.
- Senator Kahn noted that it seems that the primary purpose of this bill is to remove the word “nonsectarian” so that religious schools will qualify for a relationship with public schools.
 - Representative Cordelli said he believes that is the case.
- Senator Ward asked Representative Cordelli about the school fair in May and whether it is online or in-person.
 - Representative Cordelli said he believes it is in-person.
 - He plans to send the school fair information to the committee.

Jody Underwood - Chair, Croydon School Board

- Supports this bill.
- They will be directly affected by this bill.

- The term “nonsectarian” in question was put in place by the Croydon decision.
- There is already a pending court case in NH, as well as VT, that would consider it to be discrimination against religious schools as other private schools are eligible for this program.
- Separation of church and state says that students cannot be assigned to a religious school. In this case, parents would be choosing to tuition their child to a religious school.
- Sending school district would have to send to an approved school for academic or other reasons.
- Private schools are held to higher levels of accountability to the sending district than public schools.
 - They must provide annual reports of academic achievement to sending schools where public schools are not. Public schools should have to.
- As previously noted, the state already uses public dollars to send children to religious schools.
- The state also uses public dollars to send students to religious schools in other states. For instance, St. Johnsbury Academy in VT.
- School districts would not be placing students in religious schools. Parents would be.
- As long as sectarian schools are excluded by statute, there will continue to be pushback legally.
- The bill would be improved by changing it to “sectarian *or* nonsectarian” which would make the intent of the law change much clearer.
- Senator Prentiss asked Ms. Underwood if St. Johnsbury Academy is a religious school.
 - Ms. Underwood said they stand on a religious founding and carry religious ideals in the classroom.
- Senator Kahn asked Ms. Underwood who Croydon currently has a relationship with for grades 5-12.
 - Ms. Underwood said they base their selection on where parents are asking, they are open to any schools that parents request.
 - Public schools include Sunapee, Lebanon, Claremont and Newport.
 - Newport Montessori is also included.
 - Throughout the years, other private schools have been utilized as well, i.e. Campbell Union Academy, Crossroads.
- Senator Kahn said that is a pretty good selection of schools.
- Senator Kahn asked Ms. Underwood if she has reviewed the NH Constitution, chapter two, article 83, relative to public funds and private schools.
 - Ms. Underwood said yes, she is very aware of that chapter of the constitution. She was hoping this year’s constitutional amendment would have passed. She believes the supreme court cases would’ve addressed that.

- Senator Kahn said he believes the supreme court case was specific around tuition waivers with regard to religious schools.
 - Ms. Underwood said it was relative to tax credit scholarship money, which is also public dollars. Senator Kahn agreed, not tuition waivers.
- Ms. Underwood said it is discriminatory to not include religious schools in such a program.
- Senator Kahn said the unresolved question is when these religious schools require religious education, which would then be in defiance of separation of church and state.

Representative Bob Lynn – Rockingham, District 7

- Supports this bill.
- It is time to end discrimination against religious schools.
- He understands Senator Kahn’s sentiment regarding separation of church and state, but he respectfully disagrees.
- The supreme court decision did not specifically address required religious education, although a Justice pointed out the difference between a religious school and a school’s curriculum being based on religion.
- He does not believe religious schools don’t offer at least an option for a religious course.
- It would be a violation of the U.S. Constitution to discriminate against religious schools.
- As the current law says “nonsectarian,” if a school were run by a religious organization, that would be enough to exclude them from this program. This is contradictory to recent supreme court case decisions.
- As a matter of basic fairness, the Montana case said the state does not have to allow public funding to go to any private schools, but, if the state chooses to allow funds to go to some private schools, they cannot discriminate against religious schools.

Barrett Christina – Executive Director, NH School Boards Association

- Opposed to this bill.
- The bill is simply not needed.
- Our public schools are free to contract with other public schools.
- Hooksett is a great example as they contract with Pinkerton Academy.
- No need to expand this bill when options are already available.
- RSA 193-E includes an accountability provision.
- It would be prudent to ensure that private schools receiving money are indeed complying with minimum standards.
- Plans to submit written testimony due to technical issues.

Kirby West

- Supports this bill.
- Speaking on behalf of the Institute for Justice.
- The Institute for Justice is a nonprofit law firm who litigates cases surrounding educational choice.
- They represented the Espinoza supreme court case.
- They're currently involved in the lawsuit against NHDOE based on the provision before the committee today.
- If this case is resolved by the courts, the sectarian exclusion will be struck down.
- The areas that are left open are not relevant here.
- The Espinoza decision said "the state need not subsidize private education, but once the state decides to do so, it cannot disqualify some private schools solely because they are religious."
- That is exactly what the sectarian exclusion is doing here.
- It doesn't look at curriculum, it simply looks at any sectarian school, of any religion, and they are automatically excluded from the program.
- This violates the First Amendment.
- They advocate the passage of this bill as it will bring the tuitioning program in line with constitutional protections.
- This bill clarifies what towns are already doing is permissible under statute.
- Tuitioning towns are already giving parents choice to choose between schools.
- The town of Croydon, where their lawsuit is based, is already giving parents choice. This bill was enacted to allow Croydon to do this.
- With regard to lower costs in some circumstances, based on facts from their lawsuit, Mount Royal Academy's high school tuition is \$8,755 per student as where Newport's public-school costs \$15,124 per student.
- There can be significant cost savings.

amh

Date Hearing Report completed: April 30, 2021