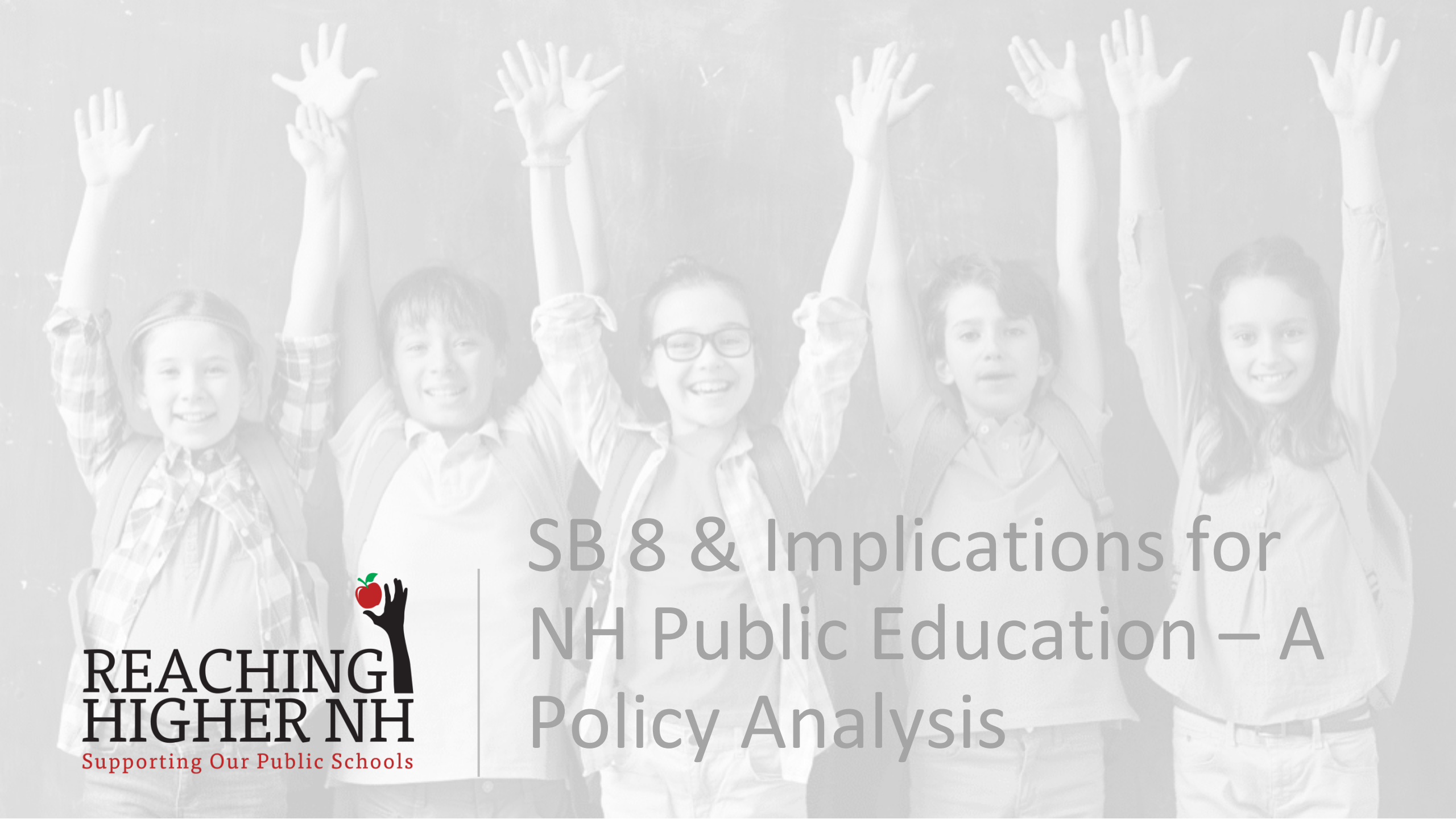

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Supporting Our Public Schools

SB 8 & Implications for NH Public Education – A Policy Analysis

Reaching Higher NH:
A Public Education Policy Resource

What we do

Track, report on, and explain public education legislation in a way that stakeholders can understand and use to make informed decisions.

Convene and work with parents, students, educators, and business and community leaders to gather stories, different points of view, and information to share with the Granite State community.

Prepare and deliver issue briefs on critical topics in education.

Support local innovation through special projects in communities throughout NH.

Reaching Higher NH is a nonpartisan public education policy resource for New Hampshire families, educators, and elected officials.

Our mission is to support high quality public education for every student in New Hampshire.

We provide resources and analysis to help raise public awareness and engagement around efforts to bring together communities and create opportunities to develop and/or support the following:

- 21st century skills;
- Diminish dropout rates;
- Encourage the development of personalized career pathways; and,
- Reduce reliance on high stakes testing and expand innovative, locally-driven models of instruction and assessment.

Overview

Senate Bill (SB) 8 was signed into law by Governor Sununu on June 29th, 2017 with an effective date of August 28, 2017. SB 8, commonly referred to as the "Croydon" bill, addresses situations where communities in New Hampshire do not provide a local public school for certain grades. For instance, many communities in New Hampshire do not have a local high school and so students attend schools outside of the local district. The goal of this report is to dive into the details of the legislation and highlight the implications for communities across New Hampshire.

WHAT DOES SB 8 DO?

SB 8 **extends** the **existing authority** of school boards to tuition students out-of-district so that school boards can now execute contracts with nonsectarian (nonreligious) private schools to cover grades where the local school district does not offer a public school.

WHAT DOES SB 8 NOT DO?

- SB 8 does not require any school board or school district to change how it currently conducts business – **there are no new mandates in SB 8.**
- SB 8 does not provide for any form of a **voucher or tuition subsidy** to offset costs of attending private school for individual students.
- SB 8 does not provide funding for students **currently enrolled in private school** in New Hampshire.

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Context

SB 8 is referred to as the “Croydon” bill due to that town’s legal dispute with the New Hampshire Department of Education over whether the town could use public dollars to pay for tuition at private schools. This legal dispute began court hearings in 2015 and continued through the passage of SB 8 in spring 2017.

But SB 8 is not exclusively about Croydon, as there area a number of communities in New Hampshire that do not offer a local public school for all grades K-12. There are roughly 245 towns and cities in New Hampshire and yet only 92 public high schools (including charter schools), indicative of the fact that many small towns in New Hampshire tuition students out-of-the local district for high school. For example, Timberlane Regional High School, Exeter Regional High School, Keene High School, and Fall Mountain Regional High School all educate students from a number of surrounding communities.

Before SB 8, communities in New Hampshire were able to execute tuition contracts with other public schools (e.g., students in Stratham attend Exeter Regional High School), with public academies (such as Coe-Brown), and in certain circumstances with schools in bordering states.

Source: New Hampshire Department of Education

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Statutory Changes

SB 8 changes the following sections of NH statute:

RSA 189:1-a

RSA 193:1, I(d)

RSA 193:3

RSA 193:4

RSA 194:27

RSA 198:4

- SB 8 amends six sections of existing New Hampshire law. Many of the changes appear overlapping and are confusing to follow when reading the legislation. In order to reduce confusion, the following slides break down SB 8 into seven different parts, with an individual slide dedicate to each change in statute.
- Each slide shows New Hampshire law (pre-SB 8) and then shows SB 8 language in **red**. The slides also show what parts of the state law were deleted by SB 8 (shown by text with a ~~line through it~~).
- In order to save space, some slides do not show all sentences of the pre-SB 8 statute. This is noted in **blue**.
- Each slide then highlights the major implications for New Hampshire's communities.

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Statutory Changes – RSA 189:1-a

189:1-a Duty to Provide Education. –

I. It shall be the duty of the school board to provide, at district expense, elementary and secondary education to all pupils who reside in the district until such time as the pupil has acquired a high school diploma or has reached age 21, whichever occurs first; provided, that the board may exclude specific pupils for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school, and further provided that this section shall not apply to pupils who have been exempted from school attendance in accordance with RSA 193:5.

II. Elected school boards shall be responsible for establishing the structure, accountability, advocacy, and delivery of instruction in each school operated and governed in its district. To accomplish this end, and to support flexibility in implementing diverse educational approaches, school boards shall establish, in each school operated and governed in its district, instructional policies that establish instructional goals based upon available information about the knowledge and skills pupils will need in the future.

III. School boards shall adopt a teacher performance evaluation system, with the involvement of teachers and principals, for use in the school district. A school board may consider any resources it deems reasonable and appropriate, including any resources that may be provided by the state department of education. In this paragraph, "teacher'' shall have the same meaning as in RSA 189:14-a, V.

IV. Pursuant to RSA 193:3, VI, a school board may execute a contract with any approved nonsectarian private school approved by the school board as a school tuition program as defined in RSA 193:3,VII to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

Implications

Local school boards boards now have the authority to execute contracts with approved nonsectarian private schools for grades that the local district does not offer through a district school.

Background

RSA 189 outlines responsibilities of school boards, superintendents, teachers, and truant officers. RSA 189:1-a covers the duty of local school boards to provide public education. SB 8 amends this section of statute to assign school boards with the authority and responsibility for executing contracts with nonsectarian private schools.

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Statutory Changes – RSA 193:1,I(d)

193:1 Duty of Parent; Compulsory Attendance by Pupil. –

I. A parent of any child at least 6 years of age and under 18 years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless:

(a) The child is attending a New Hampshire public school outside the district to which the child is assigned or an approved New Hampshire private school for the same time;

(b) The child is receiving home education pursuant to RSA 193-A and is therefore exempt from this requirement;

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and adequate education grants under RSA 198:41;

(d) The child is attending a public or private school located in another state which has been approved by the state education agency of the state in which the school is located***, or is attending a nonsectarian private school located in New Hampshire that is approved as a school tuition program by the school board pursuant to RSA 193:3, VII***;

Implications

Parents will now be in compliance with New Hampshire's compulsory education law if their child attends a nonsectarian private school located in New Hampshire where the local school board has approved the private school as a school tuition program.

Background

Under RSA 193:1, parents are required by law to send their child to school beginning at age 6. The law says that parents shall send their children to the local public school (to which the child is assigned in the resident district) but also provides a set of exceptions. The exceptions state that parents can comply with the law through several alternative options, including home educating their child or sending their child to private school. SB 8 adds a new exception, which is for parents to send their children to nonsectarian private schools that have been approved by the local school board as a school tuition program.

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Statutory Changes – RSA 193:3

SB 8 adds two new sections to RSA 193:3 (VI and VII). This slide shows section VI. Section VII is shown on the next slide.

193:3 Change of School or Assignment. –

(additional sections of statute not shown)

III. (a) Each school board shall establish a change of school assignment policy, based on the best interest of the pupil and requiring a vote of the school board to reassign a pupil from the public school to which he or she is currently assigned to another public school, or to approve a request from another superintendent to accept a transfer of a pupil from a school district that is not part of the school administrative unit, provided that the following conditions are met: *(additional sections of statute not shown)*

IV. (a) Any person having custody of a child may apply to enroll that child in a public school or public academy outside the school district in which the person and child reside. If the non-resident school district or public academy agrees to enroll the child it may charge tuition to the parent or may enter into an agreement for payment of tuition with the school district in which the child resides. (additional sections of statute not shown)

V. A placement made by a child's special education team pursuant to that child's individualized education program shall not be deemed a change of school assignment for purposes of this section.

VI. If there is no public school for the child's grade in the resident district, the school board may assign the child to another public school in another school district or to any nonsectarian private school that has been approved as a school tuition program by the school board. The school board may execute a contract with an approved nonsectarian private school to provide for the education of a child who resides in the school district, and may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level and the school board decides it is in the best interest of the pupil.

Implications

Where the local school district does not have a public school for certain grades (e.g., no middle school or high school), local school boards can assign students (for those certain grades) to nonsectarian private schools that the local school board has executed a contract with and approved as school tuition programs.

Local school boards can use public funds (“raise and appropriate money”) to pay for the tuition of students who attend nonsectarian private schools that the local school board has executed a contract with and approved as school tuition programs.

Background

RSA 193 empowers local school boards to assign students to schools (with lots of flexibility at the local level for the specific assignment process). SB 8 amends the statute to allow local school boards to assign students to nonsectarian private schools approved as school tuition programs.

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Statutory Changes – RSA 193:3 (Cont)

193:3 Change of School or Assignment. – *(additional sections of statute not shown)*

VII. In this section, "approved as a school tuition program" means a school that has been approved and contracted by the school board to provide students with the opportunity to acquire an adequate education as defined in RSA 193-E:2. Upon approval by the school board, the school shall receive status as an approved school tuition program, shall be deemed in compliance with the provisions of 193-E:3-b, I(a) and (b), and shall qualify as a school approved to provide the opportunity for an adequate education. The school shall be required to submit to the school board an annual student performance progress report in a format selected by the school board, which may include reporting of aggregate achievement data to protect student privacy, and that demonstrates that students are afforded educational opportunities that are substantially equal in quality to state performance standards for determining an adequate education. A private school that receives tuition program students shall:

(a) Comply with statutes and regulations relating to agency approvals such as health, fire safety, and sanitation;

(b) Be a nonsectarian school;

(c) Be incorporated under the laws of New Hampshire or the United States, and

(d) Administer an annual assessment in reading and language arts, mathematics, and science as defined in RSA 193-C:6 to tuition program students. The assessment may be any nationally recognized standardized assessment used to measure student academic achievement, shall be aligned to the school's academic standards, and shall satisfy the requirements of RSA 193-C:6 for school tuition program students. The school's annual assessment results for tuition program students shall be submitted to the commissioner and school board. If the school enrolls 10 or more publicly-funded tuition program students and if the school's group assessment percentile score for tuition program students is less than the 40th percentile, the commissioner may require a site visit to determine if the school provides the opportunity for an adequate education in accordance with RSA 193-E:3-b. After the third consecutive year of a tuition program school being unable to demonstrate that it provides an opportunity for an adequate education, the school may be subject to revocation of tuition program status.

Implications

Local school boards now have the authority to determine that a nonsectarian private school satisfies New Hampshire's requirements for providing public education ("provide students with the opportunity to acquire an adequate education").

Any nonsectarian private schools that are approved as a school tuition program must comply with requirements VII (a) – VII (d) above.

Background

RSA 193-E says that New Hampshire's schools must provide students with the opportunity to acquire an adequate education, with specific detail on what constitutes an adequate education (e.g., English, math, science, etc.). Before SB 8, only the state Department of Education could determine whether a school satisfied the requirements of RSA 193-E (the state legislature and board of education set the minimum standards for an adequate education). SB 8 gives local school boards the authority to determine that a nonsectarian private school satisfies the accountability requirements of RSA 193.

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Statutory Changes – RSA 193:4

193:4 District Liability for Elementary or Junior High School Tuition.
Any district shall pay for the tuition of any pupil who, as a resident of the district, has been assigned to attend a public elementary or junior high school or school of corresponding grade in another district ***or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII,*** and any district not maintaining an elementary or junior high school or school of corresponding grade shall pay for the tuition of any pupil who, as a resident of the district, [~~after full investigation by the state board of education~~] is determined to be entitled to have such tuition paid by the district where the pupil resides, and who attends an approved public elementary or junior high school or public school of corresponding grade in another district***, or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII***. Except under contract***,*** the liability of any school district under this section for the tuition of any pupil shall be the current expenses of operation of the receiving district for its elementary or junior high school or public school of corresponding grade, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

Implications

School districts now must pay the tuition for students who attend a nonsectarian private school (for elementary school or middle school) that has been approved by a local school board as a “school tuition program.”

Background

RSA 193:4 requires local school districts to pay for the tuition of students who, under certain circumstances (spelled out in the statute), do not attend the local public school. SB 8 amends this section of the statute in order to require local school districts to pay the tuition for any students assigned to a nonsectarian private school approved as a school tuition program.

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Statutory Changes – RSA 194:27

194:27 Tuition. –
Any district not maintaining a high school or school of corresponding grade shall pay for the tuition of any pupil who with parents or guardian resides in said district or who, as a resident of said district, [~~after full investigation by the state board of education~~] is determined to be entitled to have his or her tuition paid by the district where the pupil resides, and who attends an approved public high school or public school of corresponding grade in another district [~~or~~]**,** an approved public academy***, or a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII***. Except under contract as provided in RSA 194:22, the liability of any school district hereunder for the tuition of any pupil shall be the current expenses of operation of the receiving district for its high school, as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils.

Implications

Similar to the previous slide, local school districts are now required to pay the tuition of students who attend a nonsectarian private school (for high school) that has been approved by a local school board as a "school tuition program."

Background

Same as previous slide.

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Statutory Changes – RSA 198:4

198:4 Estimates. –
The school board of each district in its annual report shall state in detail the additional sums of money, if any, which will be required during the ensuing fiscal year for the support of the public schools, for the purchase of textbooks, scholars' supplies, flags and appurtenances, for the payment of the tuition of the pupils in the district in high schools [~~and~~]**,** academies***, and any nonsectarian private school approved as a school tuition program by the school board*** in accordance with law, and for the payment of all other statutory obligations of the district.

Implications

The local school must report every year to the public on the payments provided to any nonsectarian private school with which the local school board has approved as a school tuition program.

Background

New Hampshire law requires that local school boards, in their annual reports, provide summative information to the public including expenditures on various things, such as tuition for high school. SB 8 requires that school boards include in these annual reports, any tuition payments to nonsectarian private schools approved as school tuition programs by the local school board.

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FAQs

Q. Can school boards now execute contracts with private schools where the district pays a certain amount and then parents pay the remainder of the tuition (if they are able to)?

No. RSA 193:4 and RSA 194:27 both stipulate that school districts must pay full tuition, which is defined as all costs except transportation costs. Additionally, RSA 186:11, XXXII says “Discrimination. Ensure that there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or **economic status** of the benefits of educational programs or activities.” This means that school boards cannot create tiered systems that rely on parents covering some portion of the tuition – school districts would need to pay full tuition for all students.

Q. If a school board executes a contract with a nonsectarian private school, who is responsible for overseeing special education services?

The **sending school district** remains responsible for special education services. RSA 186-C:10 states, “A school district shall establish an approved program or programs for children with disabilities, or shall enter into cooperative agreements with other districts to provide approved programs for children with disabilities, or shall pay tuition to such an approved program maintained by another school district or by a private organization.” RSA 186-C:13 places responsibility with school district for providing services for students with disabilities, as required by federal law.

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FAQs

Q. Can a local school board execute a contract with a nonsectarian private school that does not have the necessary facilities to serve students with physical disabilities or that lacks the ability to serve students with learning disabilities?

It is **not clear**. State (RSA 186-C) and federal (Individuals with Disabilities Education Act) law state that all students with disabilities have a right to a **free, appropriate public education in the least restrictive environment**. Whether this means that nonsectarian private schools approved as school tuition programs must accept and serve all students is unclear. SB 8 did not provide any details on this. This is in contrast to charter schools which, under RSA 194-B:8, cannot discriminate against any child with a disabilities and must provide due process in accordance with the relevant state and federal laws.

Given that SB 8 created a new category of school – a nonsectarian private school approved as a school tuition program – it is unclear how exactly state and federal laws will apply with respect to students with disabilities.

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FAQs

Q. How does this impact cooperative school districts?

SB 8 does not have any direct or immediate impact on districts currently part of a cooperative school district. SB 8 provides local school boards the ability to execute contracts with nonsectarian private schools, but it does not change the existing system for entering into and out of a cooperative school district. (RSA 195 outlines the laws governing cooperative school districts and this section of statute was not amended in any way by SB 8.)

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FAQs

Q. Can a for-profit, nonsectarian private school receive students under SB 8?

Yes. There is no requirement under SB 8 that the nonsectarian private school be a not-for-profit entity.

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Questions?

For additional information, contact:
Dan Vallone, Director of Engagement at
dan@ReachingHigherNH.org

For more information on public education issues:

ReachingHigherNH.org

603-715-9696

40 N. Main Street
Concord, NH 03301

ReachingHigherNH.org

@ReachingHigherNH

@ReachHigherNH

@ReachingHigherNH

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