



**REACHING
HIGHER NH**

Supporting Our Public Schools

SB 193 Policy Analysis

Updated: November 8, 2017

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.



Basic Concept

Although Senate Bill 193 has undergone a number of revisions since April 2017, the basic concept remains the same. SB 193 would establish a statewide Education Freedom Savings Account program (hereafter, we use the term voucher to describe the program), where a parent or guardian signs a contract with an independent scholarship organization to receive a voucher of up to 95% of the state adequacy funding per pupil (about \$3,600 plus differentiated aid).

In this analysis we will break down the legislation as it was put forward on November 8th, 2017. Specifically we will focus on:

1. **Eligibility Criteria**
2. **Approved Uses of Voucher Funds**
3. **Scholarship Organization Oversight**
4. **Stabilization Funds (a new provision as of 11/8/17)**
5. **Special Education**
6. **Potential Impact**

Eligibility

Students would be eligible to sign up for a voucher if they meet the criteria laid out in **A & B** below:

A -

1. A New Hampshire resident who is at least 5 years old and not older than 20 years of age **AND**
2. who has not graduated from high school **AND (one of the following 3 options)**
 - A. who is currently attending a New Hampshire public school, including a chartered public school for a minimum of two consecutive semesters **OR**
 - B. who received a voucher the prior year **OR**
 - C. who is entering kindergarten or first grade

AND (one of the following 4 options)

B -

1. whose annual household income is less than or equal to 300% of the Federal Poverty Guidelines (~\$72,000 for a family of 4) **OR**
2. who is assigned to a school that for two consecutive years has been unable to demonstrate that it provides the opportunity for an adequate education pursuant to RSA 193-E:3-b **OR**
3. who has an individualized education program (IEP) or an accommodation plan under section 504 of the Rehabilitation Act of 1973 **OR**
4. who was not admitted to a chartered public school or whose application for an education tax credit scholarship pursuant to RSA 77-G was not funded.

WHAT THIS MEANS:

SB 193 would still create a **near-universal voucher program**. The bill states that any student who “was not admitted to a chartered public school” is eligible for a voucher – it does not stipulate that students must **apply** to a chartered public school in order to be eligible. This creates a loophole which would mean basically all of New Hampshire’s public school students (chartered public schools serve ~2% of public school students) irrespective of their family income, could receive a voucher.

Loophole in the eligibility criteria would mean that essentially **all of New Hampshire’s public school students** would be eligible for a voucher



Approved Use of Voucher Funds

Voucher Funds could be used for the following expenses:

- Tuition for course fees at any public school, nonpublic school, or post-secondary institution
- Textbooks, curriculum, or supplemental materials [**Note: there is no definition for what constitutes “supplemental materials”**]
- Payment to a tutor or a tutoring official [**Note: SB 193 defines “tutor”, but does not create any mechanism to verify compliance**]
- Fees for transportation (not to exceed \$750 per school year)
- Tuition and fees for online learning programs and professional preparatory programs [**Note: there is no definition for what constitutes an “online learning program”**]
- Educational services or therapies from a licensed or certified practitioner or provider
- Assistive devices (if verified by a professional that such items are essential for the student)
- Fees for a nationally standardized norm-referenced achievement test, advanced placement exam, or any department approved exam, such as the SAT or ACT, related to college post-secondary institution admission

WHAT THIS MEANS:

SB 193 provides little oversight in terms of how public funds are spent. Because SB 193 uses terms such as “supplemental materials” and “online learning program,” which are not defined in state law, it creates loopholes that could lead to misuse of public funds. The bill does not create a mechanism for rigorous public scrutiny of expenses to ensure all expenditures are related to education.

POTENTIAL CONCERNS

In other states that have initiated similar voucher programs, there have been significant instances of fraud and abuse. In Arizona, for example, a 2016 [state audit](#) identified more than \$100,000 in misspent funds over the course of six months (August 2015 – January 2016). The Arizona audit provides a cautionary tale as that state’s level of oversight is significantly more robust than what is proposed in SB 193 - and still was insufficient to prevent misuse.



Scholarship Organization Oversight

SB 193 defines a Scholarship Organization as a charitable organization incorporated or qualified to do business in this state that:

- Is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code
- Complies with applicable state and federal anti-discrimination and privacy laws
- Is registered with the department of justice, director of charitable trusts
- Has been approved by the department of revenue administration for the purpose of issuing scholarships pursuant to RSA 77-G:5

SB 193 outlines the major responsibilities of a Scholarship Organization as:

- Manage administrative services, in cooperation with the department, to verify eligibility, maintain copies of all agreements, and provide annual reports to the department, chairman of the house education committee, and the chairman of the senate education committee on the number of students participating in the program, the providers of services to students, and the value of the students' eligible accounts
- Review all receipts for fees and services (from voucher recipients)
- Provide an annual report identifying the number of eligible students with accounts, the list of participating nonpublic schools and educational service providers (with the #'s of voucher-students served), and the value of funds used
- Conduct an annual survey (which shall be included in the annual report) of parent satisfaction among voucher-participants
- Conduct an independent annual audit of all accounts of eligible students

WHAT THIS MEANS:

SB 193 does not provide substantive public oversight of scholarship organizations, nor does it require basic governance provisions that would protect against abuse of public dollars. For example, there is no requirement for public representation on the board of a scholarship organization. SB 193 also does not require scholarship organizations to uphold key conflicts of interest provisions – for example, a scholarship organization could have individuals on its board who own, or otherwise have financial interest in, educational service providers.



Stabilization Funds

The latest version of SB 193 attempts to create a stabilization fund to support school districts for the loss of state revenue due to vouchers. Here are the basic provisions:

- For each school district, the Commissioner of Education will calculate the loss in state adequacy as a result of students signing up for a voucher
- If the combined loss in state adequacy aid is greater than one-fourth of one percent (0.25%) of the school district's budget from the prior year, the Commissioner of Education shall disburse funds to districts to match any loss of state adequacy aid in excess of the 0.25%
- Such stabilization funds will be included in the September 1 disbursement of state adequacy aid

WHAT THIS MEANS:

The intent appears to be to provide funds to school districts to mitigate against volatile losses in state adequacy aid. However, the latest version of SB 193 does not include details necessary for stabilization funds to work – for example, SB 193 does not create a specific sign-up window for vouchers; students could sign up for a voucher at any point in time. Therefore:

- It is not clear at what point the Commissioner of Education will calculate each district's combined loss due to vouchers, but the calculation must occur prior to September 1 in order to disburse stabilization funds with the normal adequacy aid that goes out on September 1
- **It is not clear that school districts would receive any stabilization funds for students who sign up for a voucher AFTER September 1** (or likely earlier given the Commissioner of Education will need time to coordinate the disbursement)
- It is not clear where stabilization funds come from – stabilization funds would be NEW state aid and so would require a funding source

POTENTIAL CONCERNS:

The experience from other states with comparable programs demonstrates the importance details, such as clear timelines and processes for selecting vouchers, play in implementing any kind of voucher program. By not including a specific sign-up period for vouchers, SB 193 limits the impact of the proposed stabilization funds. Local communities could still feel the negative financial impact for the loss of state aid which would have the most discernable impact on property-poor towns.



Special Education

SB 193 includes a provision which states:

Participation in the program shall have the same effect as a parental placement of their child under 20 U.S.C. section 1412(a)(10) of the Individuals with Disabilities Education Act (IDEA).

WHAT THIS MEANS:

Parental placement refers to situations where parents voluntarily choose to place their child in a nonpublic school. The [National Center for Learning Disabilities](#) identifies four key protections (among many) provided to students with disabilities under federal law that **no longer apply in situations of parental placement:**

1. **Free, appropriate public education (FAPE)** – this is the right that a student with disabilities has to a public education, provided at no cost to parents, irrespective of the scope of disability, that is molded to best meet the student’s unique needs.
2. **Least restrictive environment (LRE)** – this is the right that a student with disabilities has to spend as much time as possible in the general educational environment alongside of the student’s peers (i.e., a protection against schools unnecessarily separating students with disabilities into segregated classrooms) so that the student can learn with his or her peers “to the maximum extent that is appropriate.”
3. **10-Day Rule** – this is the right that a student with disabilities has where if such a student is suspended from school for a total of 10 days, the school must hold a meeting to determine whether the student’s disability is contributing to the actions resulting in suspension; if this is the case, then additional measures must be taken (by the school) to support the student.
4. **Due Process Rights** – this refers to the right that a student with disabilities has to an appeals process to challenge decisions made by the school with respect to the student’s education.

POTENTIAL CONCERNS:

- The experience from other states, indicates parents may not know they are waiving rights under federal law when selecting a voucher – **SB 193 does not require a briefing from schools to ensure parents understand the consequences.**
- **SB 193 does not require participating nonpublic schools (schools that would receive public dollars) to accept and serve all students – nonpublic schools could deny services to students with disabilities, leading to a more segregated system.**



Potential Impact

Two issues prevent us from accurately modeling the bill's potential financial impact with any reasonable degree of certainty.

1. The latest version of the bill includes a **loophole in the eligibility criteria** which would extend eligibility to all New Hampshire public school students not currently enrolled or admitted to chartered public schools; this means that essentially 98% of students would be eligible for vouchers and so the take-up rates we previously modeled ([here](#) and [here](#)) would still be the most reasonable estimate.
2. The latest version of the bill does **not include a specific sign-up period for vouchers**. This prevents us from modeling the amount of stabilization funds districts could receive as it is not possible to predict when students will sign up for vouchers and thus the total loss in state aid calculated by the Commissioner in time for the September 1 disbursement of state adequacy aid. It also appears as though districts would not receive any stabilization funds for students who select a voucher after September 1 and so local communities would need to come up with ways to compensate for such loss in state aid on their own.



Questions?

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