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Date/Time of Request:	Tuesday, July 14, 2009 13:20 Central
Client Identifier:	CCL
Database:	NH-ST-ANN
Citation Text:	NH ST s 193:27
Lines:	229
Documents:	1
Images:	0

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Revised Statutes Annotated of the State of New Hampshire [Currentness](#)

Title XV. Education

▢ [Chapter 193. Pupils \(Refs & Annos\)](#)

▢ Education of Children Placed in Homes for Children, Health Care Facilities, or State Institutions

→ **193:27 Definitions.**

As used in this subdivision:

I. “Home for children” means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by [RSA 170-E:25](#), II and III; or any residential school approved under [RSA 186:11](#), XXIX.

II. “Health care facility” means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

III. “State institution” means the New Hampshire hospital, Laconia developmental services, and the youth development center.

IV. “Sending district” means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, “sending district” means the school district in which the parent resides. For the purposes of this paragraph a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this paragraph.

V. “Receiving district” means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. “School district” means a school district in the state.

HISTORY

Source. 1981, 326:1. 1982, 39:6. 1985, 241:1, 2; 355:3, 4. 1988, 107:5. 1990, 257:9. 1998, 206:4. 2006, 139:1, eff. July 21, 2006. 2008, 274:20, eff. July 1, 2008.

Amendments--2008. Paragraph IV: Inserted “RSA 170-C,” in the first sentence.

--**2006.** Paragraph IV: Deleted the third sentence.

--**1998.** Paragraph IV: Inserted “the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463” following “home for children” in the first sentence and added the third sentence.

--**1990.** Paragraph I: Substituted “[RSA 170-E:25](#), II and III” for “RSA 170-E” following “defined by”.

--**1988.** Paragraph III: Substituted “Laconia developmental services” for “the Laconia state school and training center” following “New Hampshire hospital”.

--**1985.** Paragraph I: Chapter 241:1 deleted “or” preceding “child care agency”, added “or any residential school approved under [RSA 186:11](#), XXIX” following “RSA 170-E”, and made other minor stylistic changes.

Paragraph IV: Chapter 241:2 substituted “most recently” for “last” preceding “resided” and “other than” for “before placement” thereafter in the first sentence and added the second and third sentences.

Chapter 355:3 purported to amend par. IV, however, the changes had been made previously by ch. 241.

Paragraph VI: Added by ch. 355:4.

--**1982.** Paragraph IV: Amended generally.

Paragraph V: Deleted “or state institution” following “health care facility”.

CROSS REFERENCES

Definitions, school boards, transportation and instruction of pupils, see [RSA 189:1-d](#).

Educationally disabled children at the youth development center county correctional facilities and the youth services center, see [RSA 186-C:19-a](#).

Educationally disabled children in state institutions, see [RSA 186-C:19](#).

Legal residence required, school attendance, see [RSA 193:12](#).

Liability for education of children in homes for children or health care facilities, see [RSA 193:29](#).

Liability for expenses of educationally disabled children, see [RSA 186-C:13](#).

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1. Validity

Under statutory framework assigning liability to sending school district for special education costs of children placed by court in a “home for children,” amendment to definition of “home for children” so as to include “residential schools” did not create an unconstitutional, unfunded mandate; even prior to amendment, school district, or town supporting that district, that sent child to residential school pursuant to court order was liable for the special education costs, and therefore the amendment did not represent a new, expanded, or modified responsibility requiring additional local expenditures. [Nashua School Dist. v. State \(1995\) 140 N.H. 457, 667 A.2d 1036. Schools ↪ 154\(3\)](#)

2. Construction with other laws

Under New Hampshire's statutory framework for assigning responsibility for special education costs as part of the state's responsibility to ensure that children with educational disabilities receive a free appropriate education as mandated by the Individuals with Disabilities Education Act (IDEA), liability for special education expenses of child placed and cared for in a home for children in New Hampshire did not depend upon whether the child was a legal resident of New Hampshire for purposes of school attendance. [Manchester School Dist. v. Crisman, 2002, 306 F.3d 1. Schools ↪ 154\(3\)](#)

3. “Sending district”

Under New Hampshire's statutory framework for assigning responsibility for special education costs as part of the state's responsibility to ensure that children with educational disabilities receive a free appropriate education as mandated by the Individuals with Disabilities Education Act (IDEA), school district in which child with disability who was placed in home for children lived prior to her placement was the district in which the child most recently “resided,” and thus, was the “sending district” as contemplated by the statutory framework, even if the child's parents were never legal residents of that district before her placement in the home for children. [Manchester School Dist. v. Crisman, 2002, 306 F.3d 1. Schools ↪ 154\(3\)](#)

Parents' placement of their child with a disability in home for children, with the aid of the New Hampshire Division of Children and Youth Services (NHDCYS), was not required to be facilitated by the New Hampshire Department of Health and Human Services (NHDHHS) or made by court order in order for school district in which the home was located to be considered the "sending district" under New Hampshire's statutory framework for assigning responsibility for special education costs as part of the state's responsibility to ensure that children with educational disabilities receive a free appropriate education as mandated by the Individuals with Disabilities Education Act (IDEA). [Manchester School Dist. v. Crisman, 2002, 306 F.3d 1. Schools ↪ 154\(3\)](#)

For purposes of statute requiring sending district to be liable for special-educational expenses for child placed in home for children, "sending district" was school district in which dependent student was residing at time that he was actually placed in home for children, not school district in which student's mother was residing; child was in legal custody of Division for Children, Youth and Families (DCYF), not parents, on date that student was actually placed in home for children. [In re Juvenile 2004-789-A \(2006\) 153 N.H. 332, 897 A.2d 940. Schools ↪ 154\(3\)](#)

Date of original actual placement of child in a children's home is intended time standard for determining which school district is the "sending district" for purposes of statute requiring sending district to be liable for special-educational expenses for child placed in home for children. [In re Juvenile 2004-789-A \(2006\) 153 N.H. 332, 897 A.2d 940. Schools ↪ 154\(3\)](#)

4. Education plans

Under relevant statutes, when an educationally disabled child between ages of eighteen and twenty-one is incarcerated at the state prison, school district that bears financial responsibility for child's education must enter state prison to perform evaluations, develop individualized educational plan, and hold annual staffings with school personnel. [Nashua School Dist. v. State \(1995\) 140 N.H. 457, 667 A.2d 1036. Schools ↪ 148\(2.1\)](#)

Whether to transfer the burden of providing individualized education program for educationally disabled state prison inmates between eighteen and twenty-one from local school districts to corrections department is a question for the legislature. [Nashua School Dist. v. State \(1995\) 140 N.H. 457, 667 A.2d 1036. Schools ↪ 148\(2.1\)](#)

5. Special education costs

When a child has been placed by a school district or a probate court in an out-of-district special education program at a residential school, the sending district is liable by statute for all special education costs of the child. [Nashua School Dist. v. State \(1995\) 140 N.H. 457, 667 A.2d 1036. Schools ↪ 154\(3\)](#)

School district was liable for cost of providing regular public education to dependent, neglected and/or abused children living at group home located within district; residents of group home were properly counted in city's

share of district operational costs paid pursuant to formula based on apportioned average daily membership of students in town relative to average daily membership of students in district. [Town of Gilsum v. Monadnock Regional School Dist. \(1992\) 136 N.H. 32, 611 A.2d 625. Schools ↪ 159](#)

Statutes requiring a school district in which an educationally handicapped child last resided before being placed in a home for children, health care facility, or state or private institution to pay for such child's special education expenses apply regardless of the date on which a child was placed in a home for children, health care facility, or state or private institution. [In re Gary B. \(1983\) 124 N.H. 28, 466 A.2d 929. Schools ↪ 10](#)

6. Administrative order

Decision of state Department of Education (DOE) that school district in which child with disability who was placed in home for children lived prior to her placement was the district financially liable for the costs of the child's special education in the district in which the home was located became a final order and was binding upon the financially liable district, where that district could have, but did not, appeal that decision to the State Board of Education (SBE) or to a court of competent jurisdiction. [Manchester School Dist. v. Crisman, 2002, 306 F.3d 1. Schools ↪ 155.5\(1\)](#)

7. Res judicata

Under New Hampshire law, school district found by state Department of Education (DOE) to be financially liable for special education costs of child with disability who was placed in home for children in another school district was barred under the doctrines of collateral estoppel and res judicata from subsequently challenging the DOE's determination, which was made a decade earlier. [Manchester School Dist. v. Crisman, 2002, 306 F.3d 1. Administrative Law And Procedure ↪ 501; Schools ↪ 155.5\(1\)](#)

N.H. Rev. Stat. § 193:27, NH ST § 193:27

Updated with laws currently effective July 7, 2009 through Chapter 142 of the 2009 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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