

Westlaw Delivery Summary Report for CENTER ON CHILDR

Date/Time of Request:	Tuesday, July 14, 2009 13:19 Central
Client Identifier:	CCL
Database:	NH-ST-ANN
Citation Text:	NH ST s 193:29
Lines:	230
Documents:	1
Images:	0

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson Reuters, West and their affiliates.

C

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

→ **193:29 Liability for Education of Children in Homes for Children or Health Care Facilities.**

I. For any child placed and cared for in any home for children or health care facility, the sending district shall make payments to the receiving district as follows:

(a) For a child attending a public school in the receiving district who receives special education as required by RSA 186-C, the sending district is liable for either the average per pupil cost of the receiving district as estimated by the state board of education under [RSA 193:4](#), or for the actual prorated cost of the special education and any related services, as defined in [RSA 186-C:2](#), provided by the receiving district, whichever is greater.

(b) For a child attending a public school to which the receiving district as defined in [RSA 193:27](#) shall pay tuition under an AREA or other contractual agreement, the sending district as defined in [RSA 193:27](#) is liable for all costs which said receiving district must pay under that agreement.

(c) If a child is assigned to an out-of-district special education program, the sending district is liable for all costs under RSA 186-C.

II. Actual fiscal liability under paragraph I commences upon enactment of this statute. However, the determination of liability as applied in paragraph I refers to children placed in a home for children or health care facility prior to as well as subsequent to enactment.

III. If the receiving district receives any state or federal aid for educating a child in any home for children or health care facility, including but not limited to aid for foster children under [RSA 198:23](#), that amount shall be deducted from the liability of the sending district for that child.

IV. The agency responsible for placing the child shall inform the sending and receiving districts of where the child presently resides and where the child last resided before placement in a home for children, health care facility, or state institution or where the parent of the child resides if the child is in the legal custody of a parent who resides within the state.

V. The cooperative school district, not the pre-existing district, shall be liable for the cost associated with the

education of children placed in a group home, as defined in [RSA 170-E:25](#), II(b), within such cooperative school district provided, however, that the provisions of RSA 193:29, I(a) shall apply to children receiving special education.

HISTORY

Source. 1981, 326:1. 1982, 39:7. 1983, 286:1. 1993, 322:8, eff. July 1, 1993. 2008, 274:33, eff. July 1, 2008.

Amendments--2008. Paragraph I(a): Substituted “related services” for “educationally related services”.

--1993. Paragraph V: Added.

--1983. Paragraph I(a): Inserted “either” preceding “the average”, and added “or for the actual prorated cost of the special education and any educationally related services, as defined in 186-C:2, provided by the receiving district, whichever is greater” following “[RSA 193:4](#)”.

--1982. Rewrote par. I, added a new par. II, redesignated former par. II as par. III and deleted “or state institution” following “health care facility” in that paragraph, and redesignated former par. III as par. IV and added “or where the parent of the child resides if the child is in the legal custody of a parent who resides within the state” at the end of that paragraph.

Revision note. Inserted “RSA” preceding “186-C:2” in par. I(a) to conform reference to citation style of New Hampshire Revised Statutes Annotated.

CROSS REFERENCES

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

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

ANNOTATIONS

In general [1](#)

Construction with other law [2](#)

Residence [3](#)

Review [5](#)

“Sending district” [4](#)

[1](#). In general

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\(2.1\)](#)

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\(3\)](#)

Statute governing liability for education of children in homes for children or health care facilities did not shift costs of regular public education from school district where child resided in placement to school district where child resided prior to placement where no contractual agreement existed between respective school districts providing education in one district to children who live in another, with corresponding payment of tuition. [Town of Gilsum v. Monadnock Regional School Dist. \(1992\) 136 N.H. 32, 611 A.2d 625. Schools ↪ 159](#)

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](#)


2. Construction with other law


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\(3\)](#)


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)

3. Residence


In declaratory judgment action to determine which school district was liable for the special education expenses of an educationally handicapped child, evidence was sufficient to support finding that the child's residence for nearly one year with a married couple who wished to adopt him was bona fide. [In re Gary B. \(1983\) 124 N.H. 28, 466 A.2d 929.](#) Schools  153

Term “resided,” as used in statute 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 the child's special education expenses, refers to the place where a child actually lived rather than to legal residence or domicile. [In re Gary B. \(1983\) 124 N.H. 28, 466 A.2d 929.](#) Schools  153

The phrase, “the district in which the child last resided,” as used in statute 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 the child's special education expenses, means the place where the child most recently lived outside of a facility. [In re Gary B. \(1983\) 124 N.H. 28, 466 A.2d 929.](#) Schools  153

Where educationally handicapped child lived for nearly one year with a married couple who wished to adopt him, returned to custody of division of welfare after the couple decided not to adopt him and became a patient at the state hospital and later lived at a group home and at a training center in Massachusetts, the school district in which the child lived while living with the couple who wished to adopt him was liable for his special education expenses at the training center in Massachusetts and was obligated to develop an individualized education plan for the child. [In re Gary B. \(1983\) 124 N.H. 28, 466 A.2d 929.](#) Schools  153

4. “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)

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 actu-

ally 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\(3\)](#)

5. Review

Supreme Court would review de novo trial court's decision to deny mother's motion to dismiss in dependency action that concerned which school district was responsible for paying third school district for special-education expenses that were incurred after child had been placed in home for children; appeal presented question of law since trial court construed statute governing reimbursement and applied statute to essentially undisputed set of facts. [In re Juvenile 2004-789-A \(2006\) 153 N.H. 332, 897 A.2d 940. Infants ↪ 249](#)

N.H. Rev. Stat. § 193:29, NH ST § 193:29

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

Copyright © 2009 by the State of New Hampshire Office of the Director of Legislative Services and Thomson Reuters/West 2009.

END OF DOCUMENT