

What Are Your Obligations to Charter Schools, Anyway?



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In New Hampshire, charter schools are public schools operated independent of any local school board. Charter schools operate as nonprofit secular organizations under a charter granted by the New Hampshire State Board of Education. Students who attend charter schools are not enrolled in the district where they reside, and local school districts do not receive adequacy aid for such students. Yet, school districts have certain obligations to students enrolled in charter schools, and have additional responsibilities when the charter school is located within the geographical boundaries of the school district. Further, it appears that these obligations are growing with each passing legislative session. This article addresses the most frequently asked questions that we receive about a school district's obligations to charter school students and highlights a number of recent changes in this area of law.

Transportation

Local school districts that have a chartered public school located in their district may be required to provide transportation to *resident* students who attend that charter school. RSA 194-B:2, V states in relevant part that:

Pupils who reside in the school district in which the chartered public school is located shall be provided transportation to that school by the district on the same terms and conditions as provided for in RSA 189:6 and RSA 189:8 and that transportation is provided to pupils attending other public schools within that district. However, any added costs for such transportation services shall be borne by the chartered public school.

Therefore, if a school district provides transportation to resident students to and from its local public school, it must

provide transportation, on the same terms and conditions, to charter school students who reside in the district and attend a charter school in the district. Of course, in this scenario the school district has the right to bill the charter school for any additional costs incurred as a result of this transportation. In our experience, many charter schools decline to pay for such transportation, in which case the district would have no obligation to provide it. There is also generally no obligation to transport regular education students to a charter school located outside of the geographical bounds of the district. However, there may be different special education transportation obligations, which are discussed further below.

It should be noted that there is a bill currently pending before the New Hampshire legislature that would amend the transportation statute quoted above. As introduced, this bill proposes to remove the requirement for charter schools to bear the costs of transportation to the charter school.¹ If this bill passes without further amendment, local school districts would be responsible for the costs of transporting resident students to charter schools located in their districts and would have no right of reimbursement from the charter schools.

Special Education

When a child who is eligible for special education is enrolled in a charter school, the child and the child's parents retain all of their rights under federal and state special education laws, including the child's right to be provided with a free and appropriate public education ("FAPE"). A FAPE is provided through the special education and related services that are outlined in the student's Individualized Education Program ("IEP").

Under New Hampshire law, the district where the charter school student resides retains responsibility, including financial responsibility, for ensuring that the student receives the special education and related services outlined in the IEP.² This means that local school districts retain *all* of the special education responsibilities for resident students enrolled in charter schools, including entering student data into the New Hampshire Special Education Information System ("NHSEIS"), convening team meetings, inviting charter school staff to team

meetings, conducting evaluations, and providing appropriate written notices of meetings and team decisions.

When a child who is eligible for special education is enrolled in a charter school, the local education agency (“LEA”) of the district where the child resides must convene an IEP team meeting and invite representatives from the charter school to that meeting.³ At that meeting, the team must determine how to ensure that the child will receive a FAPE in accordance with his or her IEP. Pursuant to RSA 194-B:11, III(b), the child’s special education and related services must be provided using any or all of the methods listed below, starting with the least restrictive environment:

- 1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider’s location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child’s resident district shall provide transportation for the child.

It is clear that the school district where the child resides is not *required* to provide special education and related services at the charter school, but it is an available option. The IEP team must decide where the required services will be provided and who will provide them.

The school district where the charter school is located is not responsible for providing special education services to

all students with disabilities who attend that charter school. School districts are responsible only for those students who reside in their school district.

The school district where a student resides is also obligated to provide transportation if the child requires transportation in order to receive special education and related services. This could be interpreted to require transportation to the charter school if a student may be receiving special education services at the charter school. Similarly, it could be interpreted to require a district to provide transportation to students between the charter school and the district’s buildings, if the district provides any services at its own schools.

Section 504 Plans

Although New Hampshire’s charter school statute exempts charter schools from many state requirements, it specifically requires all charter schools to abide by state and federal nondiscrimination laws, which implicitly includes Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (“ADA”). Therefore, the charter school is responsible for all of the procedural aspects of Section 504, including convening 504 meetings, evaluating as deemed appropriate, drafting 504 plans, and providing parents and students with their procedural safeguards. The charter school is also responsible for providing students with necessary accommodations, pursuant to their 504 Plans.

Curricular Courses and Co-Curricular Activities

Historically, local school boards have determined whether charter school students could participate in the school district’s courses and activities. Effective March 26, 2016, charter school students will be permitted to access the curricular courses and co-curricular activities offered by the school district where they reside.⁴ Just as home school and private school students are permitted to attend classes and participate in extracurricular activities, such as student clubs, drama productions, and athletic teams, charter school students will now also be permitted to do so.⁵

School boards can and should adopt a policy governing charter school student participation in curricular classes and co-curricular activities, provided that the policy is not more restrictive than the policies for other resident students. For curricular classes, some key areas the policy may need to address include transportation to and from individual classes, prerequisites, earning of credit, and diplomas. For co-curricular activities some key issues the policy may need to address include any conduct, attendance, and academic requirements.

With respect to athletics, the New Hampshire Interscholastic Athletic Association permits charter school students to “represent the non-public or charter school they attend or the public high school in the district where they reside.”⁶ In order for a charter school student to participate in athletics in their high school of residence, the charter school student must meet all adopted policies of the local school board, must make such a request in writing to the principal of the local public school, and the principal must certify that the student is eligible to participate.⁷

Charter school students only have a right to participate in the curricular courses and co-curricular activities offered by the school district where they reside; charter school students do not have a right to participate in these programs at the school district where the charter school is located.

Regional Career and Technical Education Programs

In the spring of 2015, the New Hampshire legislature amended the laws on Regional Career and Technical Education (“CTE”) programs. The statute governing CTEs sets forth a cost-sharing mechanism for districts that do not have a local CTE program and choose to send students to a CTE program out of district.⁸ Under this funding mechanism, the state pays a portion of the CTE tuition and transportation reimbursement, and the student’s sending district is “financially responsible for 25 percent of the career and technical education portion of the receiving district’s cost per pupil for the prior school year.”⁹ The sending district is also responsible for paying the

transportation costs for such students, with reimbursement rights from the state.

The 2015 amendments clarified the definition of a “sending district” for the purposes of CTE payments. Unsurprisingly, a sending district is defined as “[a] school district where students reside who attend a regional center, regional program, or alternative education program other than within the district itself.”¹⁰ However, the definition then goes on to state that “if a student attends a chartered public school, the sending district shall be the school district in which the student resides.” Therefore, the law is explicit: The district where a student resides must provide for the tuition and transportation costs discussed above, even if that student attends a charter school. This means that although a charter school student is not enrolled in his or her resident school district and the resident school district receives no adequacy aid for that student, the resident school district is still responsible for the statutory prescribed CTE costs.

Endnotes

- 1 See HB 1272 (2016), http://www.gencourt.state.nh.us/bill_Status/billText.aspx?id=442&txtFormat=html.
 - 2 RSA 194-B:11, III(a).
 - 3 RSA 194-B:11, III(b).
 - 4 Chaptered Law 4 (2016), HB 555, located at: http://www.gencourt.state.nh.us/bill_Status/billText.aspx?id=130&txtFormat=pdf&v=current
 - 5 *Id.*
 - 6 NHIAA Bylaws, Article I, Section 13
 - 7 *Id.*
 - 8 See RSA 188-E:7.
 - 9 RSA 188-E:7, I and II
 - 10 RSA 188-E:2, VII(a).
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