

DEVELOPMENTS IN NEW HAMPSHIRE EDUCATION LAW: STATE STATUTES

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I. Introduction

The 2016 legislative session was a busy one with 330 bills enacted into law. The legislature this year was particularly focused on the opioid epidemic in New Hampshire and, after a special session on the issue, passed a number of new laws addressing this important issue, some of which impact local school districts. Other relevant changes in the law include amendments to the Right to Know law, changes to the student recording law, new school nurse qualifications, and a new law requiring dyslexia screenings. This handout provides an overview of these relevant new state statutes.

II. The Opioid Epidemic in New Hampshire

There was no topic more discussed across the state and in the state legislature this past year than New Hampshire's opioid epidemic. Nationwide, New Hampshire has the third-highest per capita drug deaths.¹ In 2014, there were 325 drug overdose deaths in New Hampshire, the majority of these were contributed to opioids.² As of July 2016, New Hampshire has reported at least 161 fatal drug overdoses.³

¹ Ella Nilsen, *Report: New Hampshire has third-highest drug deaths per capita in the nation with little sign of slowing down*, Concord Monitor (Mar. 9, 2016), <http://www.concordmonitor.com/Articles/2016/03/From-Archives-1/DrugDeaths-cm-032116>.

² New Hampshire Department of Health and Human Services, *Opioid Abuse/Misuse Response in New Hampshire*, (October 7, 2015), <http://www.dhhs.nh.gov/dphs/cdcs/alerts/documents/opioid.pdf>.

³ Casey McDermott, *N.H. Medical Examiner: At Least 161 Drug Overdoses So Far in 2016*, New Hampshire Public Radio (July 11, 2016), <http://m.nhpr.org/term/health-0>.

New Hampshire students are not immune to this epidemic. According to the 2015 Kids Count Data Report, New Hampshire ranks among the top states for teen drug and alcohol use.⁴ According to a 2013 survey, “16.5% of NH high school students reported misuse of prescription drugs and/or illicit drug use with 2.7% reporting heroin use or trying heroin at least once.”⁵

In response to this epidemic, the legislature passed over 15 bills addressing this issue in the 2016 legislative session. The new laws that are particularly relevant for school districts are discussed below.

a. Drug and Alcohol Education in Schools

In an effort to help prevent drug and alcohol abuse, the New Hampshire legislature enacted RSA 189:11-d, I, which sets forth a requirement that New Hampshire public schools provide drug and alcohol education as part of their health education programs. Beginning in the 2016-17 school year, all public schools are required to provide “age and developmentally appropriate drug and alcohol education to pupils based upon the needs of the pupils and the community.”⁶ This instruction is to be delivered as part of the “school board-approved kindergarten through grade 12 health education program.”⁷ The new law does not mandate any specific curriculum, number of hours, or depth of such instruction, presumably leaving it to local school boards to determine. The law does allow school boards to authorize the use of an “evidence-based prevention program” to meet this requirement, but such a program is not mandated.⁸

⁴ Mike Hayward, *NH Among the Worst in Teen Drug-Abuse Rankings*, New Hampshire Union Leader (July 20, 2015), <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20150721/NEWS12/150729855>.

⁵ New Hampshire School Nurses Association, *Position Statement, Naloxone Use in the School Setting: The Role of the School Nurse* (Dec. 15, 2015), [https://nhsn3a18.wildapricot.org/resources/Documents/FINAL%20Draft%20Naloxone%20Use%20in%20the%20School%20Setting%20Committee%20work%20\(1\).pdf](https://nhsn3a18.wildapricot.org/resources/Documents/FINAL%20Draft%20Naloxone%20Use%20in%20the%20School%20Setting%20Committee%20work%20(1).pdf).

⁶ Senate Bill 369 (2016); N.H. Laws of 2016, Chapter 301, Section 1 and Section 2.

⁷ Senate Bill 369 (2016); N.H. Laws of 2016; Chapter 301, Section 1.

⁸ *Id.*

b. School Board Policy on Drug and Alcohol Treatment Resources

In addition to the prevention efforts described above, schools are required to provide students and parents with drug and alcohol treatment information.⁹ RSA 189:11-d, II requires school boards to develop a policy “authorizing school district personnel to provide pupils, parents, and legal guardians with information and resources relative to existing drug and alcohol counseling and treatment for pupils.”¹⁰ This new law does not require a school district to create any additional drug treatment programs or services, but it does require school staff to provide information about existing programs and services. The type of information that could be provided to students and families could include any counseling services available at the school, as well as information about community based programs.

c. Narcan Study Committee

In 2015, the state legislature authorized lay persons to obtain an opioid antagonist (commonly referred to as Naloxone or Narcan) and administer this drug to individuals believed to be suffering from an opioid related overdose.¹¹ Narcan has been credited with saving hundreds of lives across New Hampshire, yet its use is controversial and the implications of its use are not fully understood.

One of the top priorities coming out of the opioid special session was to create a study commission to study Narcan.¹² The commission is charged with studying “all aspects of Narcan” including:

- 1) Whether there should be a registry established for those in possession of Narcan;
- 2) The training required regarding dosage, conditions for administering Narcan, and other appropriate training;
- 3) Whether there should be mandatory reporting of use of Narcan; and

⁹ *Id.*

¹⁰ *Id.*

¹¹ House Bill 271 (2015); N.H. Laws of 2015, Chapter 65.

¹² Senate Bill 447 (2016); N.H. Laws of 2016, Chapter 1, Section 1.

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- 4) Whether those persons who are administered Narcan should be required to go to outpatient treatment for a certain period of time.¹³

The commission is also obligated to produce a long-term plan on the use and distribution of Narcan. The commission's interim report was due on July 21, 2016, with the final report due on November 1, 2017.¹⁴ This report must state the commission's findings and any recommendations for proposed legislation.

School districts across the country have wrestled with the decision of whether to have Narcan available in schools. In December of 2015, the New Hampshire School Nurses Association (NHSNA) came out in support of the position that the use of an opioid antagonist, such as Narcan, should be incorporated into a school's emergency preparedness and response plan.¹⁵ The NHSNA recognized that opioid related deaths may be preventable with the timely use of Narcan, the quick summoning of emergency medical services, and the initiation of care.¹⁶ Due to the geographic nature of New Hampshire, some schools do not have timely access to emergency medical services.¹⁷ Therefore, the NHSNA concluded that school nurses, as allowed by local administration and policy, are in the position to administer life-saving measures, such as Narcan, in the event of an opioid overdose.

Schools that currently allow school nurses to possess Narcan or are considering doing so will want to watch the results of this study committee closely.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ New Hampshire School Nurses Association, Position Statement, Naloxone Use in the School Setting: The Role of the School Nurse (Dec. 15, 2015), available at: [https://nhsn3a18.wildapricot.org/resources/Documents/FINAL%20Draft%20Naloxone%20Use%20in%20the%20School%20Setting%20Committee%20work%20\(1\).pdf](https://nhsn3a18.wildapricot.org/resources/Documents/FINAL%20Draft%20Naloxone%20Use%20in%20the%20School%20Setting%20Committee%20work%20(1).pdf).

¹⁶ *Id.*

¹⁷ *Id.*

d. Drug and Alcohol Counselors

The New Hampshire legislature recognized that there is a shortage of trained drug and alcohol counselors in the state, which are necessary to help support and treat individuals dealing with substance abuse.¹⁸ Senate Bill 424 was enacted to help attract trained drug and alcohol counselors to New Hampshire. This change in the law amends RSA 330-C:21 and allows the New Hampshire Board of Licensing for Alcohol and Other Drug Use Professionals to, under certain circumstances, issue a licensed drug and alcohol certification to individuals who are licensed in other states, but who do not meet New Hampshire's licensing requirements.¹⁹ If this bill has the intended impact, it should make it easier for New Hampshire schools, particularly those located near New Hampshire's borders, to hire licensed drug and alcohol counselors and to refer families to local counselors.

III. Charter School Students

Charter schools were once again a hot topic before the New Hampshire legislature, with numerous bills introduced on various aspects of charter school administration and governance. The new charter school laws that impact public school districts are addressed below.

a. Charter School Student Transportation

House Bill 1272 changes the law with respect to transporting students who attend charter schools.²⁰ The bill, which went into effect on July 1, 2016, amends RSA 194-B:2, V, to read as follows:

Attendance at a chartered public school for the purposes of transportation shall not constitute assignment under the provisions of RSA 189:6 and RSA 189:8. 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 non-chartered public schools in the district

¹⁸ N.H. House Calendar, No. 29, page 9 (May 6, 2016).

¹⁹ Senate Bill 424 (2016); N.H. Laws of 2016, Chapter 248, Section 1.

²⁰ House Bill 1272 (2016); N.H. Laws of 2016, Chapter 236, Section 1.

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and utilizing the same regular bus schedules and routes that are provided to pupils attending non-chartered public schools within that district.²¹

This law, as written, creates many questions that school districts will want to consider. First, the law states that transportation for charter school students is to be provided “utilizing the same regular bus schedules and routes that are provided to pupils attending non-chartered public schools within that district.”²² It is clear that if there is a charter school located on an existing bus route, the school district would need to add a stop at that charter school to accommodate any student on that bus route who attends the charter school. What is less clear is to what extent districts will have to modify or expand existing bus routes to include stops at charter schools.

Additionally, the phrase “pupils who reside in the school district in which the chartered public school is located” may cause some confusion, particularly for cooperative school districts. Because cooperative school districts are comprised of two or more pre-existing school districts, this phrase could be interpreted in different ways. It is unclear if the new law would require transportation simply within the pre-existing school district, or if it would require transportation throughout the cooperative school district.

Finally, readers may recognize that an important sentence was removed from RSA 194-B:2, V. That sentence required that any additional costs incurred for transporting charter school students was to be borne by the chartered public school. Given the removal of this sentence, it appears that local school districts now bear the full costs of transporting charter school students.

In response to this new law, school districts with charter schools located in their districts will want to consider what, if any, impact this change will have on their current transportation obligations.

²¹ *Id.*

²² *Id.*

b. Charter School Funding for Students with Disabilities

House Bill 536 amends RSA 194-B:11 and clarifies that any state adequacy aid for students with disabilities who are attending charter schools must be paid directly to the school district where the child resides.²³ Under the prior version of RSA 194-B:11, I(b)(1), state law required that the State Board of Education provide any adequacy aid payments, plus an additional grant of \$2,036, as well as any differentiated aid, directly to the charter school.²⁴ This means that a charter school was to receive the special education differentiated aid of \$1,856 for each special education student who was enrolled in the charter school.

Readers will recall that state law mandates “the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district...”²⁵ Therefore, although one state law put the onus of funding special education for charter school students on the public school district, another state law sent the state contributions for special education costs directly to the charter school. As a result of this apparent conflict, the legislature amended RSA 194-B:11, I(b)(1) to send the state differentiated aid for special education directly to the school district where the child resides.²⁶ The New Hampshire Department of Education has typically sent the special education differentiated aid to the school district, rather than the charter school; this change in the law brings the charter school statute in line with the current practices of the

²³ House Bill 536 (2016); N.H. Laws of 2016, Chapter 22.

²⁴ Differentiated aid includes an additional \$1,725 for each pupil who qualifies for the federal free and reduced-price meal program, an additional \$675 for each pupil who is an English language learner and receiving English language instruction, an additional \$675 for each third grade student who has not tested at the proficient level or above in the reading component of the state assessment and does not qualify for one of the above differentiated aids, and \$1,856 for each pupil who is receiving special education. *See* RSA 198:40-a; *see also* N.H. Laws 2016, Chapter 262, Sections 2 and 3.

²⁵ RSA 194-B:11, III(a).

²⁶ House Bill 536 (2016); N.H. Laws of 2016, Chapter 22.

New Hampshire Department of Education.²⁷ This law went into effect on June 24, 2016.

c. Charter School Officer in the New Hampshire Department of Education

The New Hampshire Department of Education will be required to establish a charter school program officer position by at least October of 2017.²⁸ The intent of the charter school program officer is to “provide statewide administrative oversight, support, and guidance to ensure the chartered public school education program, including the delivery of special education services, complies with state and federal requirements.”²⁹ As set forth in RSA 21-N:4, the charter school program officer is to:

- (a) Answer inquiries regarding charter public schools.
- (b) Act as a liaison between chartered public schools and the department of education.
- (c) Ensure that a chartered public school is implementing its charter mission.
- (d) Provide training for interested parties on the governance of chartered public schools and the development of chartered public school policy.
- (e) Assist the chartered public school in identifying and securing alternative funding sources.
- (f) Receive and evaluate progress reports from chartered public schools, identify best practices for instruction and management in chartered public schools, and develop a process to share such best practices with other public schools.
- (g) Act as the liaison between chartered public schools and the United States Department of Education.
- (h) Act as the liaison between chartered public school advocacy groups and interested parties.
- (i) Act as the liaison between chartered public schools and other public schools in the chartered public school’s geographic region.

²⁷ N.H. House Journal, No. 4, page 33 (Jan. 6, 2016).

²⁸ Senate Bill 483 (2016); N.H. Laws of 2016, Chapter 272, Sections 1-3.

²⁹ Senate Bill 483 (2016); N.H. Laws of 2016, Chapter 272, Section 1.

(j) Work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities.³⁰

While it appears that the charter school program officer is intended to primarily work with charter schools, the program officer may serve as a tremendous resource for public school districts, particularly when trying to understand the complicated requirements surrounding special education for students attending charter schools.

d. Charter School Students Participating in District Curricular Courses and Co-Curricular Activities

Historically, students enrolled at charter schools have not been consistently or uniformly permitted to participate in curricular courses or co-curricular activities at their local public school. Instead, local school boards determined whether charter school students could participate in the school district's courses and activities and school boards across the state varied on this issue. In one of the very first bills that passed the New Hampshire legislature this year, the legislature granted charter school students the right to access the curricular courses and co-curricular activities offered by the school district where they reside.³¹ This law, which became effective on March 26, 2016, treats charter school students the same as homeschool and private school students in this respect, and permits charter school students to attend classes and participate in extracurricular activities, such as student clubs, drama productions, and athletic teams.³²

School boards can and should adopt a policy governing a charter school student's 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, the policy may want to address issues such as transportation to and from individual

³⁰ Senate Bill 483 (2016); N.H. Laws of 2016, Chapter 272, Section 2.

³¹ House Bill 555 (2016); N.H. Laws of 2016, Chapter 4, Section 1.

³² *Id.*; see also RSA 193:1-c.

classes, prerequisites, earning of credit, and diplomas. For co-curricular activities the policy will want to address 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.”³³ 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, make a written request to participate to the principal of the local public school, and receive certification from the principal that he or she is eligible to participate.³⁴

As a result of this new law, students enrolled at a charter school have the right to participate in the curricular courses and co-curricular activities offered by the school district where they reside. This right does not, however, permit charter school students to participate in these programs in the school district where the charter school is located, unless the student also resides in that district.

e. Payment for Charter School Students Attending Regional Career and Technical Education Programs

One of the last bills signed in the 2015 legislative session amended the laws on Regional Career and Technical Education (CTE) programs.³⁵ These amendments, which went into effect on July 1, 2015, overhaul much of the CTE statute.³⁶ Schools that have CTE programs or have students who participate in CTE programs will want to review those amendments closely.

One amendment worth noting is the cost-sharing mechanism for districts that do not have a local CTE program and send students to a

³³ *New Hampshire Interscholastic Athletic Association Bylaws*, Article II, Section 13 (2015), <http://nhiaa.org/PDFs/2708/4ByLawArticleIIEligibility.pdf>.

³⁴ *Id.*

³⁵ Senate Bill 190 (2015); N.H. Laws of 2015, Chapter 252.

³⁶ See RSA chapter 188-E.

CTE program out of district.³⁷ 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."³⁸ The sending district is also responsible for paying the transportation costs for such students, with reimbursement rights from the state.³⁹

The 2015 amendments clarified the definition of a "sending district" for the purposes of CTE payments. Unsurprisingly, a sending district is defined as "[the] school district where students reside who attend a regional center, regional program, or alternative education program other than within the district itself."⁴⁰ 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."⁴¹ 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 CTE costs.

IV. IEP Team Placements Do Not Require School Board Approval

In 2015, the legislature modified a superintendent's authority to reassign students to other schools. Historically, superintendents from different school districts had the authority to enter into agreements to change a student's school assignment, so long as the superintendents both agreed that the change in enrollment was in the pupil's best interest.

³⁷ See RSA 188-E:7.

³⁸ RSA 188-E:7, I and II.

³⁹ See RSA 188-E:8.

⁴⁰ RSA 188-E:2, VII(a).

⁴¹ *Id.*

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As a result of the 2015 legislation, a superintendent's authority was limited to that of recommending to the school board whether or not a pupil should be reassigned.⁴² Superintendents, therefore, no longer have the authority to enter into an agreement to reassign a pupil, without school board approval.⁴³ Rather, the school board of each school district involved in the reassignment must vote to approve the reassignment.⁴⁴ That means that the school board where the student resides must vote to allow the student to attend school in a different district and the school board where the student seeks to enroll must vote to allow the student to enroll in that district.⁴⁵

This raised concerns about whether an IEP team that places a special education student in a public school in another district must obtain approval from the school boards. The 2016 legislature responded to those concerns by amending RSA 193:3 to add a new provision regarding IEP team placements:

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.⁴⁶

This amendment clarifies that when an IEP team places a student in a public school other than the one the student has been assigned, the team is not required to obtain school board approval prior to placing that student. As the New Hampshire House Education Committee aptly recognized, "Placement of a child with a disability is the responsibility of the IEP team and not the . . . school board."⁴⁷

⁴² RSA 193:3.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Senate Bill 316 (2016); N.H. Laws of 2016, Chapter 44.

⁴⁷ N.H. House Calendar, No. 21, page 7 (April 1, 2016).

V. Dyslexia Screenings

The legislature passed some pretty substantial legislation regarding dyslexia and screening for dyslexia that all New Hampshire school districts will need to be aware of.⁴⁸

The law, located at RSA 200:58-:61, begins by defining the term “dyslexia” as a “specific learning disability” that is:

- (a) Neurobiological in origin;
- (b) Characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities that typically result from a deficit in the phonological component of language; and
- (c) Often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, and may include secondary consequences such as reading comprehension problems and reduced reading experience that can impede growth of vocabulary and background knowledge.

Beginning in 2017, school districts must “screen all public school students . . . using the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) or an equivalent cost effective screener for the identification of potential indicators or risk factors of dyslexia and related disorders upon enrollment in public school kindergarten or first grade, and at appropriate times thereafter, to monitor progress.”⁴⁹ Such screenings must be completed “no later than November 30 of each school year.”⁵⁰

This requires school districts to screen “all public school students.” As readers are aware, charter school students are, by definition, public school students. It is unclear if this new law requires public school districts to screen charter school students for “the potential indicators or risk factors of dyslexia and related disorders,” just as it does for students enrolled in the district’s public schools.

⁴⁸ See House Bill 1644; N.H. Laws of 2016, Chapter 262.

⁴⁹ House Bill 1644, N.H. Laws of 2016, Chapter 262, Section 1.

⁵⁰ *Id.*

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The new law defines “potential indicators or risk factors of dyslexia and related disorders” as:

[I]ndicators that include, but shall not be limited to, difficulty in acquiring language skills, inability to comprehend oral or written language, difficulty in rhyming words, difficulty in naming letters, recognizing letters, matching letters to sounds, and blending sounds when speaking and reading words, difficulty recognizing and remembering sight words, consistent transposition of number sequences, letter reversals, inversions, and substitutions, and trouble in replication of content.⁵¹

“Related disorders” include “disorders similar to or related to dyslexia, such as a phonological processing disorder, reading fluency disorder, and dysphasia.”⁵² Therefore, whichever tool a school district chooses to use to screen students should be designed to screen for all of the above indicators/risk factors.

Any student that is “identified as having characteristics that are associated with potential indicators or risk factors of dyslexia and related disorders” must be provided with “age-appropriate, evidence-based, intervention strategies” by January 1, 2018. Additionally, that student’s parent or legal guardian must be notified and “provided with all screening information and findings.”⁵³ Parents must also be provided with “periodic formal screening results based on individual written intervention and support plans developed with the student’s parents or legal guardian.”⁵⁴

Many schools will already have a system of written intervention and support plans already in place through their Response to Intervention (RTI) process. For schools that do not have such a formal RTI system developed, school administrators will want to develop these written materials for students who meet the above criteria, and determine who will be responsible for developing the plans and monitoring the

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

formal screenings. As with all students who participate in RTI models, schools will want to watch their progress closely and consider whether a student should be referred to special education.

House Bill 1644 also permits parents to submit “the results of an independent evaluation from a licensed reading or intervention specialist highly trained in dyslexia and related disorders for consideration by the student’s school district.”⁵⁵ Importantly, the law requires “consideration” of the evaluation, not wholesale acceptance of the results. Still, schools should review the independent evaluations closely and consider whether the student requires further screening, further interventions, and/or referral to special education.

The new law specifically states that a parent “who submits an independent evaluation shall assume all fiscal responsibility for that independent evaluation.”⁵⁶ This varies from the special education law, which allows parents to obtain funding from the school district for independent evaluations, under certain circumstances. This will undoubtedly create some confusion; schools should work with local counsel if they have questions regarding whether there is an obligation to fund an independent evaluation.

VI. State Reading Specialist

House Bill 1644 also establishes a temporary reading specialist position at the New Hampshire Department of Education.⁵⁷ This specialist is charged with providing school districts with the support and resources necessary to assist students with dyslexia and related disorders and their families. As outlined in RSA 200:60, the reading specialist must provide technical assistance for dyslexia and related disorders to school districts. The reading specialist must also develop and make available a program to ensure all New Hampshire teachers and school

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

administrators have access to materials to support professional awareness of best practices on:

- (a) Recognition of the characteristics of dyslexia and related disorders, and dysgraphia; and
- (b) Evidence-based interventions and accommodations for dyslexia and related disorders, and dysgraphia.⁵⁸

Finally, by June 30, 2017, the reading specialist is required to develop a “reading support resource guide to be used as a resource.”⁵⁹ This resource guide must be posted on the New Hampshire Department of Education’s website, and updated as necessary.

VII. Recording in Schools

In 2015, the legislature enacted a new law greatly limiting the video recording in classrooms.⁶⁰ Schools were frustrated with these changes as it limited their ability to measure student performance and to implement best practices for certain students, particularly those with disabilities. Parents were frustrated with the new law because they wanted more information on their child’s educational program and progress and felt recordings were an effective way to get this information. The legislature listened to these concerns and amended RSA 189:68 to permit recording of students in more circumstances.⁶¹

The new law reads as follows:

IV. No school shall record in any way a school classroom for the purpose of teacher evaluations without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.

V.(a) Nothing in this section shall preclude the use of audio or video recordings for use with or by a child with a disability, or by such child’s teacher or service provider when the child’s individualized education program or accommodation plan includes audio or video recording as

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ RSA 189:68.

⁶¹ House Bill 1372 (2016); N.H. Laws of 2016, Chapter 87, Section 1.

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part of the child’s special education, related services, assistive technology service, or methodology, so long as such audio or video recordings are made, used, and maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

(b) Nothing in this section shall preclude the use of audio or video recordings for student instructional purposes.

(c) Nothing in this section shall preclude the use of audio or video recordings for use in the instruction of teacher interns or student teachers after written notification to the parent or legal guardian of each affected student as to the purpose of, and privacy policy for, the recordings.⁶²

Under this new law, school districts are permitted to record students with disabilities, provided that the IEP or 504 Plan calls for such recording. Therefore, IEP or 504 teams that want to use student recordings should review and amend IEPs and 504 plans accordingly.

The law also permits the use of audio and video recordings for “student instructional purposes.”⁶³ This presumably would include most recordings that occur in a classroom, including the use of videos for classroom projects and presentations. It would also likely include any specialized instruction that is called for in a student’s IEP.

Finally, the law still precludes the use of video recording for teacher evaluation purposes, without school board approval and written consent of the parent or guardian of each student who will be in the recording.⁶⁴

A number of school districts implemented recording policies in response to the 2015 recording law. Districts will want to review these policies and ensure that they are consistent with the recent changes in the law.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

VIII. Certification of School Nurses

School nurses that are hired after July 1, 2016, will need to obtain certification by the State Board of Education and meet extensive entry level requirements.⁶⁵

The current version of RSA 200:29 states: “Each school board may appoint a school nurse to function in the school health program, and provide said nurse with proper facilities and equipment. A school nurse shall be a registered professional nurse currently licensed in New Hampshire.”

The state legislature greatly expanded RSA 200:29 to require that school nurses not only be registered professional nurses licensed in New Hampshire, but also that school nurses be certified by the State Board of Education.⁶⁶ Furthermore, in order to be certified as a school nurse by the State Board of Education, the individual must:

- 1) Have completed a board of nursing approved registered nursing program at the bachelor’s degree level or higher under RSA 326-B; and
- 2) Have three years current experience in pediatric nursing or other related nursing areas.⁶⁷

An individual who applies for certification as a school nurse must have the skills and abilities to:

- (A) Assess student’s health or situation through analysis of data collected and synthesize comprehensive data.
- (B) Identify outcomes and develop plans for individual students or situations including strategies and alternatives.
- (C) Implement interventions identified in the plan of care/action, coordinating care with school employees and evaluate outcome.

⁶⁵ House Bill 1193 (2016); N.H. Laws of 2016, Chapter 285, Section 2 and 3.

⁶⁶ House Bill 1193 (2016); N.H. Laws of 2016, Chapter 285, Section 2.

⁶⁷ *Id.*

- (D) Consult with administration to provide health education and employ strategies to promote health, wellness, and a safe environment.
- (E) Systematically evaluate the progress for the quality of practice and effectiveness toward attainment of outcomes for promoting health and a safe environment.⁶⁸

The individual must also be able to demonstrate the knowledge and ability to:

- (A) Provide quality nursing practice in a school setting.
- (B) Evaluate his or her nursing practices and continue professional development as required by a school district's professional development master plan.
- (C) Collaborate with students, families, school staff, and others in the conduct of school nursing practices.
- (D) Integrate ethical provisions and research findings into practice as a school nurse.

The State Board of Education is ordered to adopt rules setting forth how an individual can apply for a school nurse certification from the State Board, and establish any forms or fees as part of that process.⁶⁹

Importantly, school nurses employed on or before July 1, 2016 are not subject to these certification requirements. For all nurses hired after July 1, 2016, districts will want to ensure that the school nurse meets this new state law and any State Board of Education rules.

IX. Epinephrine In Schools

For the last several years, schools have been seeing an increase in students with allergies. This has resulted in an increase in the number of students who have been prescribed epinephrine to respond to a severe allergy attack.

Since 2003, students with a severe, potentially life-threatening allergy have been permitted to possess and self-administer an

⁶⁸ *Id.*

⁶⁹ *Id.*

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epinephrine auto-injector (“Epi-Pen”) under certain circumstances.⁷⁰ In order to do so, the student must comply with certain requirements set forth in state law.⁷¹ These include written approval from a physician, with very specific information including, route and dosage of medication, the frequency and time of medication administration or assistance, the student’s diagnoses, and recommendations for administration.⁷² The student must also have written approval from a parent (if under 18 years old) and the parent must provide written verification from the physician that the student has the knowledge and skills to safely possess and use an Epi-Pen at school. Finally, the school nurse or school principal must receive copies of the above information. If a student uses an Epi-Pen at school, that student must immediately report to the nurse’s office or principal’s office for appropriate follow up care.⁷³ This year the legislature amended this law to clarify that school personnel are generally immune from civil liability resulting from the student’s use of the Epi-Pen, provided that the provisions for RSA 200:42 have been met.⁷⁴

Current state law also permits school nurses to maintain an Epi-Pen, “provided by the pupil”, in the school nurses office or similarly accessible location.⁷⁵ If a school nurse is unavailable to administer the Epi-Pen in the event of an emergency, the New Hampshire Department of Education has long advised that school nurses may delegate the administration of the Epi-Pen.⁷⁶ Senate Bill 25 creates RSA 200:44-a, which sets forth the specific requirements that must be met before someone can be delegate the responsibility of administering an Epi-Pen.

⁷⁰ See RSA 200:42.

⁷¹ RSA 200:42-:43.

⁷² See RSA 200:42, I. (list of required information from physician).

⁷³ RSA 200:43.

⁷⁴ See Senate Bill 25 (2016), N.H. Laws of 2016, Chapter 39, Section 3.

⁷⁵ See RSA 200:44.

⁷⁶ New Hampshire Department of Education, Delegation of Nursing Care in Schools, http://www.education.nh.gov/instruction/school_health/faq_delegation.htm (“School nurses may delegate the administration of epinephrine auto-injectors as per Ed 311.02 and in accordance with the NUR 404 rule.”).

As a result of this bill, “designated assistive personnel” must “complete an anaphylaxis training program prior to providing or administering an epinephrine auto-injector.”⁷⁷ This training must be provided at least every 2 years and be based on resources provided by the National Association of School Nurses, the Food and Allergy Anaphylaxis Network, or the New Hampshire School Nurses’ Association. Training must cover:

- (1) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis.
- (2) Standards and procedures for the storage and administration of an epinephrine auto-injector.
- (3) Emergency follow-up procedures.⁷⁸

The school nurse conducting the training must maintain a list of individuals who have successfully completed the anaphylaxis training program.⁷⁹ Senate Bill 25 provides protection to schools, stating no school board member, school nurse, or school district employee “shall be liable for damages as a result of the administration or self-administration of an epinephrine auto-injector, the failure to administer an epinephrine auto-injector, or any other act or omission related to the possession of an epinephrine auto-injector, unless the damages were caused by willful or wanton misconduct.”⁸⁰

X. Developing a Plan for Managing Students with Allergies

By January 1, 2017, the New Hampshire Department of Education, in consultation with the New Hampshire School Nurse’s Association, must develop and make available guidelines for schools for the management of students with life threatening allergies.⁸¹ The guidelines, as set forth in RSA 200:44-a, must include: education and

⁷⁷ Senate Bill 25 (2016), N.H. Laws of 2016, Chapter 39, Section 2.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Senate Bill 25 (2016), N.H. Laws of 2016, Chapter 39, Section 3.

⁸¹ Senate Bill 25 (2016), N.H. Laws of 2016, Chapter 39, Section 2.

training for designated unlicensed assistive personnel on the management of students with life-threatening allergies; procedures for responding to life-threatening allergic reactions; the development of individualized health care plans and allergy action plans for every student with a known life-threatening allergy; and protocols to prevent exposure to allergens.⁸²

School districts must then use these guidelines to implement a plan “for the management of students with life-threatening allergies enrolled in the schools under its jurisdiction.”⁸³ That plan must be developed and made available to the public no later than September 1, 2017.

XI. Maintenance and Use of Bronchodilators, Spacers, and Nebulizers in Schools

Students with asthma or reactive airway disease may on occasion need access to asthma-related rescue medications while at school. State law already allows students, under certain circumstances, to possess and self-administer certain asthma medications, such as a metered dose inhaler.⁸⁴ Now, as a result of Senate Bill 322, school districts, at their discretion, are permitted to have bronchodilators, spacers, or nebulizers on hand in schools.⁸⁵ This new law, as codified in RSA 200:53-:57, is intended to provide additional safeguards for emergency situations where students with asthma have forgotten their inhaler, or failed to provide one to the school nurse in advance of an emergent asthma attack.⁸⁶

Pursuant to Senate Bill 322, a school board may authorize a school nurse to obtain and maintain a supply of asthma-related rescue medications at the school.⁸⁷ A health care practitioner is permitted to

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See* RSA 200:46.

⁸⁵ Senate Bill 322 (2016); N.H. Laws of 2016, Chapter 45, Section 1.

⁸⁶ N.H. House Calendar, No. 21, page 7 (April 1, 2016).

⁸⁷ Senate Bill 322 (2016); N.H. Laws of 2016, Chapter 45, Section 1.

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prescribe bronchodilators, spacers, or nebulizers directly to a school district. Schools may also obtain these directly from the manufacturer, and through gifts, grants or donations. Schools that choose to possess these items must maintain an annual report summarizing the use of the bronchodilators, spacers, and/or nebulizers.

A school nurse or “designated unlicensed assistive personnel” may only administer a bronchodilator, spacer or nebulizer to a student under the following circumstances:

- 1) The student has been previously diagnosed with asthma.
- 2) The school has a current asthma plan on file, with a physician’s order regarding the use of a rescue inhaler, including dosage information.
- 3) The school has a current asthma plan on file, with a physician’s order providing permission for the student to use the school’s supply of asthma related medications in the event of an emergency.
- 4) Written permission from the parent/guardian allowing the school nurse to administer a bronchodilator, spacer or nebulizer from the school’s supply of asthma related medications.
- 5) The school nurse must notify the student’s parent or legal guardian of the use of the school’s supply of the asthma related medications “as soon as practicable.”

The bronchodilator, spacer, or nebulizer may be administered in an “emergency or other situations as determined by the school nurse.”⁸⁸

The school nurse or designated unlicensed assistive personnel may also make the bronchodilator, spacer, or nebulizer available to students to self-administer.

In order for a “designated unlicensed assistive personnel” to administer or permit a student to self-administer a bronchodilator, spacer, or nebulizer, the following conditions must be met:

⁸⁸ *Id.*

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- 1) The individual must be a school employee or an agent of the school.
- 2) The individual must be designated by the school nurse to administer the above medications.
- 3) The individual must complete an annual asthma training program by the school nurse. Such training must be based on resources by the New Hampshire School Nurses' Association, the National Association of School Nurses, and the American Lung Association. The school nurse must also have "completed the New Hampshire School Nurses' Association approved training required to administer bronchodilators, spacers or nebulizers."
- 4) The school nurse must maintain a list of individuals who have successfully completed the asthma training program.

Senate Bill 322 provides immunity to schools, school nurses, and designated unlicensed assistive personnel for acts related to a student's use of a bronchodilator, spacer, or nebulizer, except for any "damages caused by willful or wanton conduct or disregard of the requirements established [in this law]."⁸⁹ Therefore, schools that choose to maintain and administer such asthma-related medications will want to review this law closely and ensure that their practices comply with this law.

Finally, the New Hampshire Department of Education, in consultation with the New Hampshire School Nurses' Association and the American Lung Association, is required to provide guidelines to schools on the management of students with asthma. These guidelines are to include "implementation of education and training for designated unlicensed assistive personnel on the management of students with asthma, including training related to the administration of a bronchodilator with a spacer or nebulizer, and procedures for responding to life-threatening respiratory distress."⁹⁰ Therefore, any school nurse

⁸⁹ *Id.*

⁹⁰ *Id.*

that is considering training any designated unlicensed assistive personnel would be wise to hold off on any such training until after the New Hampshire Department of Education has set forth its guidelines.

XII. DHHS Notification of Change In School Assignment

As a result of House Bill 1283, the New Hampshire Department of Health and Human Services (DHHS) is required to notify schools of placement changes that may result in changing a student's school assignment.⁹¹ If DHHS recommends or initiates an out-of-home placement or a change in placement that will result in a student being assigned to a different school, DHHS must notify the school district "as soon as possible to allow the school district to participate in the facilitation of a successful transition of the child from one school to the next."⁹²

When the school district is notified of such change, DHHS and the school district must develop a transition plan for the child. The objective of the transition plan is to "minimize the number of placements for the child and to facilitate any change in placement or school assignment with the least emotional and mental impact to the child."⁹³ This new law applies to all students who are changing schools as a result of DHHS recommending or initiating a change in the student's living environment. This law, as codified in RSA 169-C:20-a, went into effect July 4, 2016, so schools will want to be prepared to start developing transition plans for such situations.⁹⁴

XIII. Speech Language Assistants

House Bill 1246 makes changes to the state law governing speech language assistants. The previous law, RSA 326-F:2, I(b), stated that speech language assistants were exempt from the speech language pathology licensure and certification requirements provided that they

⁹¹ N.H. House Calendar, No. 14, page 10 (March 4, 2016); House Bill 1283 (2016); N.H. Laws of 2016, Chapter 65, Section 1.

⁹² House Bill 1283 (2016); N.H. Laws of 2016, Chapter 65, Section 1.

⁹³ *Id.*

⁹⁴ House Bill 1283 (2016); N.H. Laws of 2016, Chapter 65, Section 2.

were employed by a school that is approved by the New Hampshire Department of Education.⁹⁵ The new law, effective August 8, 2016, modifies this exemption.⁹⁶

Pursuant to House Bill 1246, a person is exempt from the speech language pathology licensure and certification requirements if that person is “employed at a public school or nonpublic school approved by the department of education [and does] not act independently but work[s] under the direction and supervision of a speech-language pathologist licensed under this chapter or a speech language specialist certified by the department of education.” In New Hampshire, most, if not all, speech language assistants employed by school districts are already working under the direct supervision of a licensed speech language pathologist and, therefore, schools will likely not need to make any staffing or personnel changes as a result of this change in the law.

House Bill 1246 also makes it clear that anyone who is exempt from a speech language pathology licensure or certification cannot imply by words or acts that he or she is a speech-language assistant, a speech therapy assistant, a speech assistant, an SLA, or SLPA.⁹⁷ Therefore, schools should use caution when explaining to parents what speech language services a student is receiving and who will be providing those services. If a student is receiving services from someone who is not certified as a speech language assistant, make sure that the family is aware of this and clarify how often he or she is receiving such services.

XIV. Driver’s License for Mixed Use School Bus

The New Hampshire legislature has made a number of changes to the mixed use school bus laws in recent years.⁹⁸ Under the most recent version of the law, all students are permitted to ride in a “mixed use school bus”, provided that the mixed use school bus is “a station

⁹⁵ See RSA 326-F:2, I(b).

⁹⁶ House Bill 1246 (2016); N.H. Laws of 2016, Chapter 222, Sections 1 and 4.

⁹⁷ House Bill 1246 (2016); N.H. Laws of 2016, Chapter 222, Section 3.

⁹⁸ See RSA 189:6-c, RSA 259:96-a.

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wagon, suburban, sport utility vehicle, passenger van, panel body vehicle, or vehicle converted to a school bus, owned or leased by a public school or private school and driven by a school employee, which bears a valid state inspection sticker and is employed principally in transporting schoolchildren to and from school activities.”⁹⁹ The only exception is that the law includes a mechanism which prohibits a student with disabilities from riding in a mixed use school bus when, due to a student’s individual needs, such a vehicle would be unsafe or unwise.

Despite the multiple amendments to the law in recent years, the law continued to be ambiguous as to what sort of license was required to operate a mixed use school bus. House Bill 1302 amends RSA 189:6-c, I. to clarify this ambiguity, and states as follows:

I. Pupils may be transported to or from school activities in a mixed use school bus, as defined by RSA 259:96-a, which bears a valid state inspection sticker and is operated by a driver who holds a valid driver's license to operate that vehicle. **An operator of a mixed use school bus that qualifies as a commercial motor vehicle as defined in RSA 259:12-e shall hold a valid commercial driver license pursuant to RSA 263:86 appropriate for the type and class of mixed use school bus being driven. (new language in bold).**¹⁰⁰

This amendment clarifies that if a person is driving a mixed use school bus that is simply a typical suburban, SUV, or passenger van, a regular driver’s license is sufficient. However, if the vehicle is so large that it qualifies as a commercial motor vehicle under RSA 259:12-e, a commercial driver’s license is required. This means if the vehicle has a gross vehicle weight of 26,001 pounds or more, or is designed or used to transport 16 or more passengers including the driver, a commercial driver’s license is required.¹⁰¹ The changes to the mixed use school bus

⁹⁹ RSA 259:96-a. Note: Mixed use school buses cannot be used to transport students between home and school. See RSA 189:6-c.

¹⁰⁰ House Bill 1302 (2016); N.H. Laws of 2016, Chapter 138, Section 1.

¹⁰¹ See RSA 259:12-e; RSA 263:86, I; 49 C.F.R. § 383.50.

statute go into effect on July 26, 2016.¹⁰² Schools that intend to use mixed use school buses to transport students to and from school activities in the 2016-17 school year will want to review the changes in the law to ensure that staff are appropriately licensed to drive the mixed use school bus.

XV. Changes to the Right to Know Law

The legislature made a number of amendments to New Hampshire's Right to Know Law, RSA 91-A. These amendments impact a public body's ability to charge fees for government records, and put further requirements on nonpublic meeting minutes.

a. Costs for Public Records

As readers know, the Right to Know Law requires that “[e]ach public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copy any such governmental record within its files...”¹⁰³ House Bill 606 amends this law to prohibit a public body from charging a fee for making a governmental record available.¹⁰⁴ RSA 91-A:4, IV now contains the sentence: “No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form.”¹⁰⁵ Therefore, while public bodies, such as school districts may still charge for the copying of records pursuant to the Right to Know Law, they may not charge for the administrative costs associated with making the records available for inspection.

The greatest impact of this law will be felt with respect to records that are available in an electronic form. This law suggests that when a record is available in an electronic form, the public body cannot charge for providing the record electronically. Therefore, if an individual wants a copy of the school budget and the budget is available

¹⁰² House Bill 1302 (2016); N.H. Laws of 2016, Chapter 138, Section 2.

¹⁰³ RSA 91-A:4, IV.

¹⁰⁴ House Bill 606 (2016); N.H. Laws of 2016, Chapter 283, Section 1.

¹⁰⁵ *Id.*

in an electronic form, the school district could not charge the individual for a copy of that electronic record. School districts may need to review any policies they have on electronic records or develop a policy that clarifies how electronic records will be provided.

b. Nonpublic Meeting Minutes

When school boards enter into nonpublic session, it is not uncommon that the quality or depth of the meeting minutes differs from that of the public session. This is not surprising, as often times the nonpublic meeting minutes will not be made available for public inspection due to the nature of the nonpublic session. Two new laws are aimed at addressing the requirements for non-public meeting minutes.

House Bill 1418 clarified the requirements for nonpublic meeting minutes.¹⁰⁶ The Right to Know Law has long required that public meeting minutes include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions.¹⁰⁷ As a result of House Bill 1418, RSA - 91-A:2, II was amended so that these same requirements will now apply to nonpublic meeting minutes.¹⁰⁸

House Bill 1419 amended RSA 91-A:3, III, to make additional changes to the requirements of nonpublic meeting minutes; such meeting minutes must now “record all actions in such a manner that the vote of each member is ascertained and recorded.”¹⁰⁹ These new laws go into effect on January 1, 2017.

c. Discussion with Legal Counsel

House Bill 285 modifies the Right to Know Law to allow school boards to discuss advice from legal counsel in non-public session.¹¹⁰ This new law was passed in response to the 2011 New Hampshire Supreme Court’s decision in *Ettinger v. Town of Madison Planning*

¹⁰⁶ House Bill 1419 (2016); N.H. Laws of 2016, Chapter 29, Section 1.

¹⁰⁷ RSA 91-A:2.

¹⁰⁸ House Bill 1418 (2016); N.H. Laws of 2016, Chapter 29, Section 1.

¹⁰⁹ House Bill 1419 (2016); N.H. Laws of 2016, Chapter 30, Section 1.

¹¹⁰ House Bill 285 (2016); N.H. Laws of 2016, Chapter 280, Section 1.

Board, which held that a public body, such as a school board, may not enter into a non-public session to discuss written communications from the board's attorney.¹¹¹ Rather the Supreme Court decision required that in order for boards to discuss advice from their attorney in a non-public session, the attorney must be able to contemporaneously exchange words and ideas with the public body. This decision resulted in boards needing their attorney to be available in person or by phone whenever the board wanted to discuss legal advice from the attorney in non-public session.

House Bill 285 adds an additional paragraph to RSA 91-A:3, II. This paragraph permits public bodies to enter non-public session for the purpose of:

- (1) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.¹¹²

Therefore, if a school board wants to discuss legal advice or an opinion letter from counsel in a non-public session, the board may move to enter non-public session to have such a discussion, even if legal counsel is not available to discuss the advice with the board. As Representative Robert Hull noted, this new law is “a cost saving for public bodies, as legal counsel [is] no longer needed to be present in order to consider correspondence in a nonpublic environment.”¹¹³

XVI. Background Checks for School Employee and Volunteers

School administrative units, school districts, chartered public schools, and public academies are prohibited from hiring individuals who have charges pending disposition or have been convicted of committing or attempting to commit certain specifically enumerated crimes, such as, but not limited to, felonious sexual assault, sexual assault, kidnapping, incest, endangering the welfare of a child, indecent

¹¹¹ *Ettinger v. Town of Madison Planning Board*, 162 N.H. 785 (2011).

¹¹² House Bill 285 (2016); N.H. Laws of 2016, Chapter 280, Section 1.

¹¹³ N.H. House Calendar, No. 19, page 403 (March 6, 2015).

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exposure, and/or possession, distribution, and/or manufacture of child pornography.¹¹⁴

In order to comply with this prohibition, schools are required to complete a criminal background check through the New Hampshire State Police and Federal Bureau of Investigation on every selected applicant prior to extending a final offer of employment. As part of this background check, the State Police “examine the list of crimes constituting grounds for non-approval of employment” and “report the presence or absence of any such crime” to the school. Historically schools have only been permitted to receive a list from the State Police stating which of the specifically enumerated crimes the applicant had been convicted of, convicted of attempting, or whether there are any current charges pending. The State Police were prohibited from releasing a copy of the applicant’s criminal record directly to the school.

Senate Bill 152, which went into effect on July 19, 2016, amends RSA 189:13-a,V to allow the State Police to “report the presence or absence” of any crime, felony or misdemeanor, including those crimes that do not statutorily prohibit employment by a New Hampshire school.¹¹⁵ This information can only be reported to “the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy.”¹¹⁶ The superintendent must maintain the confidentiality of this information and destroy the information immediately following the review of the information.¹¹⁷ Districts will want to review their hiring practices to ensure that they comply with this new law.

¹¹⁴ RSA 189:13-a, V.

¹¹⁵ Senate Bill 152 (2016); N.H. Laws of 2016, Chapter 117, Section 1.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

XVII. Flexible Work Requests

Senate Bill 416 enacts RSA 275:37-b and provides some limited protections to employees who request flexible work arrangements.¹¹⁸

This new law states:

No employer shall retaliate against any employee solely because the employee requests a flexible work schedule. Nothing in this section shall be construed to require any employer to accommodate a flexible work schedule. Nothing in this section shall be construed to create a cause of action for failure to provide a flexible work schedule at an employee's request.¹¹⁹

This new law will take effect on September 1, 2016; districts will want to consult with their attorneys to determine whether any employment policies or protocols need to be revised in order to comply with this new law.

XVIII. Youth Employment Certificates

In order for a student under the age of 16 to work, New Hampshire law requires that a Youth Employment Certificate, also known as “working papers” be completed for that student.¹²⁰ This certificate may only be issued after a determination has been made that the student has a satisfactory level of academic performance.¹²¹ Currently, such certificates can only be given out by principals of schools or persons authorized by them.¹²²

In response to concerns that “[p]arents of children who attend private schools or home school find it counter intuitive for the public school principal of their local school district to determine a satisfactory level of academic performance by the student in order to issue a work certificate for youths under age 16,” the New Hampshire legislature amended RSA 276-A:5 to allow parents to issue Youth Employment

¹¹⁸ Senate Bill 416 (2016); N.H. Laws of 2016, Chapter 182, Section 1.

¹¹⁹ *Id.*

¹²⁰ RSA 276-A:4, :5.

¹²¹ RSA 276-A:5, I.

¹²² *See* RSA 276-A:5, I.

Certificates for their children.¹²³ Effective August 23, 2016, House Bill 1301 permits New Hampshire students under the age of 16 to obtain youth employment certificates from either the school principal or their parent or legal guardian.¹²⁴

XIX. School Resource Officer Policy and Memorandum of Understanding

House Bill 527 amends RSA 186:11 and requires school districts that have school resource officer(s) to develop a policy regarding such resource officer(s).¹²⁵ As introduced, the bill required that the school district's policy contain a number of very specific details, including supervision of the resource officer, a process for filing complaints against the resource officer, guidelines on search and seizures, and the resource officer's use of restraints on students. The law as enacted, however, only requires that school districts with school resource officers have a policy on school resource officers. The policy must include a statement requiring the school district and the local law enforcement agency to have a signed memorandum of understanding related to the resource officer(s).¹²⁶ This new law does not take effect until January 1, 2017, which gives school districts some time to review existing policies or develop a new policy and ensure that a signed memorandum of understanding is on file.¹²⁷

XX. School Lunch Payment Policies

RSA 189:11-a addresses state requirements for school district food and nutrition programs. Senate Bill 371 adds a new requirement by adding the following paragraph to RSA 189:11-a:

VIII. A school lunch meal payment policy which is implemented by a school board either before or after the effective date of this section shall ensure that all students have access to a healthy school lunch, that the school

¹²³ N.H. House Calendar, No. 14, page 63 (March 4, 2016).

¹²⁴ House Bill 1301 (2016); N.H. Laws of 2016, Chapter 314.

¹²⁵ House Bill 527 (2016), N.H. Laws of 2016, Chapter 14, Section 1.

¹²⁶ *Id.*

¹²⁷ House Bill 527 (2016); N.H. Laws of 2016, Chapter 14, Section 2.

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district will make every reasonable effort to inform parents of the policy, and that no student will be subject to different treatment from the standard school lunch meal or school cafeteria procedures. The department of education or the state board of education, upon request of the local school board, may provide communication assistance to school districts and parents of school children regarding the school lunch meal payment policy.¹²⁸

The impetus for this bill was Senator Molly Kelly's concerns that some students were being singled out or treated differently than other students due to certain school lunch payment policies.¹²⁹ For example, Senator Kelly noted that some school lunch payment policies require that when students have a deficit in their school lunch accounts they are given a different meal than other students (such as a peanut butter sandwich, fruit, and milk), are sent to the principal's office, or are not allowed to participate in extracurricular activities.¹³⁰ According to the House Education Committee, these types of practices or policies "can demean, embarrass and humiliate students and should not be allowed."¹³¹

According to Senator Kelly and the House Education Committee, this bill does not mandate that a school district have a school lunch payment policy, but if a school does have a school lunch payment policy, it must meet certain criteria. The policy must:

- 1) Ensure that all students have access to a healthy school lunch;
- 2) Ensure that the school district will make every reasonable effort to inform parents of the policy; and

¹²⁸ Senate Bill 371 (2016); N.H. Laws of 2016, Chapter 48, Section 1.

¹²⁹ Audio Recording, Senate Education Committee (January 19, 2016), available at: http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=2925&sy=2016&sortoption=&txtsessionyear=2016&txbillnumber=sb371&q=1.

¹³⁰ *Id.*

¹³¹ N.H. House Calendar, No. 21, page 7 (April 1, 2016).

- 3) Ensure that no student will be subject to different treatment from the standard school lunch meal or school cafeteria procedures.

The legislature recognized that this new law could make it more difficult for school districts to collect delinquent school lunch fees from parents, but noted that the new law allows the New Hampshire Department of Education and the State Board of Education to assist school districts in communicating with families about school lunch payment policies and how to apply for free and reduced price lunch programs, if needed.¹³²

This law went into effect on July 2, 2016. School districts that currently have a school lunch payment policy will want to review their policy and ensure that it complies with this new law.

XXI. Agreements Between Governmental Units

Senate Bill 328 amends RSA 53-A:2 and A:3 to allow school districts to enter into agreements with other public agencies, including cities, towns, and village districts.¹³³ This revised law states, as follows:

53-A:3 Joint Exercise of Powers. Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised jointly with any other public agency of this state. Such authority shall include, but not be limited to, the power to enter into agreements to share tax revenues resulting from local economic development efforts and with respect to cities, towns, school districts, and school administrative units, the power to form the entities and conduct the activities provided for in RSA 162-G and RSA 31:134 through RSA 31:149, and/or the appropriate activities, including but not limited to, conducting financial, human resource, information technology, and other managerial and administrative functions related to the operation of the participating agencies as provided for in RSA 31, RSA 37, and RSA 194-C:4 as well as city charters adopted under RSA 49-C and town charters adopted under RSA 49-D.¹³⁴

¹³² Audio Recording, Senate Education Committee (January 19, 2016), available at: http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=2925&sy=2016&sortoption=&txtsessionyear=2016&txtbillnumber=sb371&q=1.

¹³³ Senate Bill 328 (2016); N.H. Laws of 2016, Chapter 46.

¹³⁴ Senate Bill 328 (2016); N.H. Laws of 2016, Chapter 6, Section 2.

According to the House Education Committee, this amendment “allows for the possibility of cost saving efforts through a shared business administrator among school districts in transportation, maintenance, purchasing and many other areas.”¹³⁵

XXII. Government & Civics Competency Assessments

Senate Bill 157 amends RSA 189:11 to require that school districts implement a competency assessment of the United States government and civics prior to graduation.¹³⁶ Until March 16, 2016, RSA 189:11 stated as follows:

In all public and private schools in the state there shall be given regular courses of instruction in the history, government and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county and state government and of the federal government. Such instruction shall begin not later than the opening of the eighth grade and shall continue in high school as an identifiable component of a year's course in the history and government of the United States and New Hampshire.

Now, in addition to the above requirements, the state legislature has added a requirement that a competency assessment on U.S. government and civics must be administered to students as part of a high school course in history and government of the United States and New Hampshire. The assessment must include “the nature, purpose, structure, function, and history of the United States government, the rights and responsibilities of citizens, and noteworthy government and civic leaders.”¹³⁷ There is no requirement that the exam include an assessment of the student’s knowledge of New Hampshire history and civics, although that is a subject that must be taught as part of the curriculum.

¹³⁵ N.H. House Calendar, No. 21, page 7 (April 1, 2016).

¹³⁶ Senate Bill 157 (2016); N.H. Laws of 2016, Chapter 7, Section 1.

¹³⁷ *Id.*

This new law states that the competency assessment must be “locally developed”, but permits the United States Citizenship and Immigration Services test for incoming citizens to be administered in lieu of a locally developed exam. It does not appear that there is any consequence for being unable to pass the exam, although students who do pass are “eligible” for a certificate issued by the school district.

This new requirement applies to students who are eligible to receive a high school diploma or high school equivalency certificate on or after January 1, 2017.¹³⁸ School districts will want to ensure that they take steps towards the development or adoption of a competency assessment and discuss the issuance of school district certificates for those students who are eligible for such certificates.

XXIII. Statewide Assessment

State law requires that an annual statewide assessment be administered to students in grades 3-8 and grade 11.¹³⁹ Historically, New Hampshire law has stated that students are to be assessed in the areas of reading and language arts, mathematics, science, history, geography, civics and economics.¹⁴⁰ However, neither NECAP (the previously used statewide assessment) nor Smarter Balanced (the currently used statewide assessment) contain assessments in the areas of history, geography, civics, or economics.¹⁴¹ Therefore, House Bill 1121 amends RSA 193-C:5 to make it consistent with current statewide practice that the statewide assessment must only include assessments in the areas of reading and language arts, mathematics, and science. Further, House Bill 1121 makes it clear that the statewide assessment program “shall only measure student understanding of key content-

¹³⁸ Senate Bill 157 (2016); N.H. Laws of 2016, Chapter 7, Section 2.

¹³⁹ RSA 193-C:6.

¹⁴⁰ RSA 193-C:5.

¹⁴¹ N.H. House Calendar, No. 14, page 9 (March 4, 2016).

specific concepts, skills, and knowledge applied within or across academic content domains.”¹⁴²

This is not to say that the legislature does not value history, geography, civics, or economics.¹⁴³ The legislature still finds these to be “critical areas of study.”¹⁴⁴ However, the legislature places the assessment of history, geography, civics, and economics within the purview of the local school board, rather than as required assessments on the statewide assessment.¹⁴⁵ Based strictly on the language of House Bill 1121, it does not appear that local school boards are being required to adopt assessments in the areas of history, geography, civics, and economics, but rather the local school board could choose to assess in these areas and the local school board would have control over what assessments to use.

XXIV. Teaching About Child Abuse

School boards are required to ensure that specific studies are taught as part of the health education and physical curriculum.¹⁴⁶ Schools will soon need to add instruction on the topic of child abuse to that curriculum. The legislature amended RSA 189:10 to read:

189:10 Studies. The school board shall ensure that health education and physical education are taught to pupils as part of the basic curriculum. The school board shall ensure that all studies prescribed by the state board of education are thoroughly taught, especially physiology, hygiene, and health and physical education as they relate to the effects of alcohol and other drugs, **child abuse as established in the definition of “abused child” under RSA 169-C:3, II**, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system. (new language in bold).

¹⁴² House Bill 1121 (2016); N.H. Laws of 2016, Chapter 75, Section 1.

¹⁴³ *See id.*; N.H. House Calendar, No. 14, page 9 (March 4, 2016).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See* 189:10.

Thus, it appears that the legislature intends for the New Hampshire State Board of Education to adopt rules prescribing that “child abuse” be included in the health education and physical education curriculum.¹⁴⁷ Once those rules are adopted, school boards must incorporate this instruction into their curriculum.

The bill, as introduced, sought to teach students about sexual abuse and healthy relationships. The bill was amended to require instruction on the topic of child abuse, as defined in RSA 169-C:3, II; which includes topics of sexual abuse, intentional physical injury, psychological injuries, and physical injury by other than accidental means.¹⁴⁸ School boards will want to be on the lookout for upcoming changes in the State Board of Education’s rules and consider whether changes need to be made to their health/physical education curriculum.

XXV. Military Uniforms at Graduation

House Bill 1225, also known as “Brandon’s Law” permits students who are members of the armed forces to wear their military uniforms at graduation.¹⁴⁹ The law is named for U.S. Marine Lance Cpl. Brandon Garabrant, a New Hampshire citizen who was killed in action in Afghanistan. While in high school, Brandon was a volunteer firefighter and Marine. Brandon sought to wear his Marine dress uniform in his high school graduation ceremony. This request was denied and Brandon was required to wear his cap and gown, igniting a heated debate not just in New Hampshire but across the nation.¹⁵⁰

As a result of House Bill 1225, students are permitted to wear a dress uniform issued to him or her by the armed forces provided that the student has met all graduation eligibility requirements and that the student has completed basic training and is an active member of a

¹⁴⁷ See N.H. Admin R. Ed 306.401.

¹⁴⁸ RSA 169-C:3, II.

¹⁴⁹ House Bill 1225 (2016); N.H. Laws of 2016, Chapter 32, Section 1.

¹⁵⁰ Gilbert, Steve. “New NH law named for Marine allows military uniforms at high school graduation.” *Stripes Okinawa*, May 4, 2016 (available at <http://okinawa.stripes.com/news/new-nh-law-named-marine-allows-military-uniforms-high-school-graduation>).

branch of the United States armed forces.¹⁵¹ The law is located at RSA 189:71 and became effective July 1, 2016.

XXVI. Military Memorial Plaques

House Bill 1130 establishes a process for school districts to approve memorials for those who died during military service.¹⁵² House Bill 1130 does not mandate that school districts create any memorials, but permits districts to approve any such memorials through a school board vote or a warrant article at the annual school district meeting. This new law does not require a school district to fund any costs associated with the design, manufacture, installation or maintenance of the memorials, but school districts are permitted to contribute to these costs, if they choose.¹⁵³ House Bill 1130, as codified in RSA 189:18-a, states as follows:

189:18-a Memorial or Memorial Plaque on School Property. The placement of a memorial or memorial plaque on school property in memory of an alumnus of a junior high school or high school in the district who died honorably during active duty shall require approval from the school board or approval of a warrant article acted upon at the annual school district meeting. The cost for design, manufacture, installation, or maintenance of the memorial shall not be a charge to the state, any municipality, or the school district. This section shall not apply to the addition of names to already existing memorials or to plans for memorials initiated by the municipality or school district.¹⁵⁴

XXVII. Patriotic Exercises

New Hampshire has a long standing tradition of requiring public schools to conduct “exercises of a patriotic nature” during the weeks of Memorial Day and Veterans Day.¹⁵⁵ House Bill 1300 expands that requirement, as it now requires a discussion of the words and meaning of

¹⁵¹ House Bill 1224 (2016); N.H. Laws of 2016, Chapter 32, Section 1.

¹⁵² House Bill 1130 (2016); N.H. Laws of 2016, Chapter 77, Section 1.

¹⁵³ N.H. House Calendar, No. 19, page 3 (March 18, 2016).

¹⁵⁴ House Bill 1130 (2016); N.H. Laws of 2016, Chapter 75, Section 1.

¹⁵⁵ RSA 189:18.

the Pledge of Allegiance and the Star Spangled Banner.¹⁵⁶ The amended version of RSA 198:8 now reads,

In all public schools of the state one session, or a portion thereof, during the weeks in which Memorial Day and Veterans Day fall, shall be devoted to exercises of a patriotic nature, which shall include a discussion of the words and meaning of the Pledge of Allegiance and the Star Spangled Banner.¹⁵⁷

The bill was introduced by Rep. Greg Hill to ensure that students understand the words of the Pledge and the national anthem.¹⁵⁸ The bill is not intended to interfere with local control, but is intended to ensure that children “know what they’re pledging to, and why.”¹⁵⁹ The bill took effect on July 4, 2016.

XXVIII. Disclosure of Student Information from College Entrance Exams

RSA 189:67 strictly limits the information that can be shared with testing entities and requires the destruction of such information as soon as the testing entity has completed its verification requirements. House Bill 1497 exempts the information collected in conjunction with the SAT and ACT exam from this destruction requirement, provided such exams are used to meet the requirements of the state assessment.¹⁶⁰ This makes sense - many high school students who take the SAT or ACT as part of their state assessment may not want this data destroyed because they want the information shared with certain colleges and universities. House Bill 1497 allows this sharing of information.¹⁶¹

While the SAT and ACT testing entities are not required to automatically destroy student data, House Bill 1497 still allows students

¹⁵⁶ House Bill 1300 (2016); N.H. Laws of 2016, Chapter 67, Section 1.

¹⁵⁷ *Id.*

¹⁵⁸ Audio Recording, April 5, 2016,

http://www.gencourt.state.nh.us/bill_status/BillStatus_Media.aspx?lsr=2322&sy=2016&sortoption=&txtsessionyear=2016&txtbillnumber=hb1300.

¹⁵⁹ *Id.*

¹⁶⁰ House Bill 1497 (2016); N.H. Laws of 2016, Chapter 69, Section 1.

¹⁶¹ *Id.*

to opt to have all of their personal information destroyed by such testing entities following the completion and verification of the exams.¹⁶²

XXIX. Election Officials

The legislature amended RSA 658:24 to clarify the implications of the disqualification of an election officer by removing a sentence that the legislature felt no longer applies to the statute.¹⁶³ RSA 658:24 was amended as follows:

Disqualification of Certain Persons. Any person, other than a moderator, clerk, selectman, inspector of election, or supervisor of the checklist, whose name appears on a ballot for an elective position, other than a position of an election official, shall be disqualified from performing duties as an election official in that election. ~~A person so disqualified shall not be considered to have vacated any office but rather only to be absent therefrom. A temporary replacement shall be appointed as provided in RSA 658:22.~~ A moderator, clerk, selectman, inspector of election, or supervisor of the checklist whose name appears on a ballot for an elective position, other than the position of an election official, shall be disqualified from the handling of marked ballots and the counting of votes.¹⁶⁴

This amendment serves as a good reminder that if an individual is on the ballot for an elected position, such as the school board, that individual cannot assist in the handling or counting of ballots. However, if the individual is on the ballot for the elected position of an election official, that person is not disqualified from handling the ballots or counting the votes.

XXX. Committee to Study Suspensions and Expulsions

House Bill 1145 establishes a committee to study suspensions and expulsions from school for children in licensed preschools and in public elementary schools, grades kindergarten through grade three.¹⁶⁵

¹⁶² *Id.*

¹⁶³ N.H. Senate Calendar No. 14, page 3 (April 7, 2016).

¹⁶⁴ House Bill 1220 (2016); N.H. Laws of 2016, Chapter 62, Section 1.

¹⁶⁵ House Bill 1145 (2016); N.H. Laws of 2016, Chapter 15, Section 1.

The legislature expressed concern that in the 2014-2015 school year, 101 kindergartners were suspended from school, with a total of 523 students suspended in grades K-3.¹⁶⁶ The concern was that schools were implementing zero tolerance policies for sexual harassment, and that young students were being expelled for engaging in “typical” childhood behavior, such as tickling other students.¹⁶⁷

House Bill 1145 addresses this concern by creating a six-member committee comprised of five house members and one Senate member to review suspension and expulsion data for the identified population and to acquire school discipline policies in districts with the highest incidences of expulsion and suspension.¹⁶⁸ The committee will also seek to identify resources available to assist teachers in districts with high levels of suspension and expulsion for this age group of students.¹⁶⁹ The goal of the committee is to report its findings and to recommend proposed legislation by November 1, 2016.¹⁷⁰

XXXI. Committee to Study Real Time Threat Notifications

Senate Bill 370 establishes a study committee to explore real time threat notification systems to link schools with law enforcement when schools are under direct threat.¹⁷¹ The committee, which includes one member of the Senate and four members of the House of Representatives, will look into a specific technology called Copsync911, and other entities offering a similar product, in order to reduce law enforcement response times to local schools when such schools are threatened.¹⁷² The Committee must report its findings and any recommendations for legislation by November 1, 2016.¹⁷³

¹⁶⁶ New Hampshire House Calendar, No. 14, p. 10 (March 10, 2016).

¹⁶⁷ *Id.*

¹⁶⁸ House Bill 1145 (2016); N.H. Laws of 2016, Chapter 15, Section 2 and Section 3.

¹⁶⁹ House Bill 1145 (2016); N.H. Laws of 2016, Chapter 15, Section 3.

¹⁷⁰ House Bill 1145 (2016); N.H. Laws of 2016, Chapter 15, Section 5.

¹⁷¹ Senate Bill 370 (2016); N.H. Laws of 2016, Chapter 47, Section 1.

¹⁷² Senate Bill 370 (2016); N.H. Laws of 2016, Chapter 47, Section 2 and Section 3.

¹⁷³ Senate Bill 370 (2016); N.H. Laws of 2016, Chapter 5.

XXXII. Commission to Study Withdrawing from Cooperative School Districts

What started as a bill modifying the procedures that districts must follow to withdraw from a cooperative school district, ended up as a commission to study issues related to pre-existing districts withdrawing from a cooperative school district.¹⁷⁴ The commission is charged with studying the procedure for withdrawal, the procedure for a withdrawal study, how assets are determined, valued and apportioned, the nature and scope of a withdrawal plan, and any other issues that the commission deems relevant. The commission is to file an interim report, including its findings and any recommendations for proposed legislation, by January 1, 2017.

XXXIII. Committee to Study the New Hampshire Department of Education’s Data Systems

House Bill 301 establishes a committee to study the layout and data elements contained in the statewide longitudinal data system and any other New Hampshire Department of Education maintained database that contains student level data.¹⁷⁵ Although the committee is primarily designed to look at the DOE’s data systems, particularly where student data is stored or maintained, the committee is also charged with studying the “scope, use and security of school district databases and privacy policies.”¹⁷⁶ The committee must report its findings and make any recommendations for proposed legislature by November 1, 2016.¹⁷⁷

¹⁷⁴ House Bill 1303 (2016); N.H. Laws of 2016, Chapter 225, Section 1.

¹⁷⁵ House Bill 301 (2016); N.H. Laws of 2016, Chapter 12, Section 1.

¹⁷⁶ House Bill 301 (2016); N.H. Laws of 2016, Chapter 12, Section 3.

¹⁷⁷ House Bill 301 (2016); N.H. Laws of 2016, Chapter 12, Section 5.