SOULE, LESLIE, KIDDER, SAYWARD & LOUGHMAN P.L.L.C.

ATTORNEYS AT LAW
Serving New Hampshire School Districts Since 1955

YOU CAN'T ALWAYS GET WHAT YOU WANT, BUT YOU CAN TRY

SCHOOL CHOICE, INCLUDING MANIFEST EDUCATIONAL HARDSHIP, THE CROYDON BILL AND VOUCHERS

Presented to the
2018 BRADLEY F. KIDDER LAW CONFERENCE

October 3, 2018

Barbara F. Loughman, Esquire
Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C.
22 South Main Street
Wolfeboro, NH 03864
(603) 569-8044
loughman@soulefirm.com

Diane M. Gorrow, Esquire
Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C.
220 Main Street
Salem, NH 03079
(603) 898-9776
gorrow@soulefirm.com

The material in this presentation is intended as reference material and to give general guidance only. The information is not intended as legal advice and given the rapidly changing nature of the law, you should be sure to consult with your own attorney regarding specific situations and for answers to specific legal questions.

Despite recent legislative attempts, New Hampshire does not have one specific law that authorizes school choice, nor is school choice available to everyone. However, there are a number of statutes that parents may use to require the school district where they live to pay tuition for their children to attend a school chosen by the parents, rather than the school they would otherwise attend. These materials will explain and review those laws. If these statutes are properly applied, parents should obtain transfers to their schools of choice only in certain limited instances.

ASSIGNMENT

Parents must send their children to the school to which the child is assigned. Until it was repealed in 2017, RSA 193:14 provided that "[no] pupil who shall have been assigned to a particular school by the school board shall attend any other school until assigned thereto". Although RSA 193:14 has been repealed, RSA 193:15, which establishes a penalty for unauthorized attendance, is still on the books. RSA 193:1, I, still requires parents to "cause" their child to attend the public school to which the child is assigned in the child's resident district." There are exceptions for children attending school outside the district, receiving home education, attending private school, etc.

LIMITED CHOICE: RSA 194:27 AND RSA 193:4

A form of school choice has long been allowed in New Hampshire school districts that do not have or maintain their own schools. RSA 194:27 requires any school district not maintaining a high school or school of corresponding grade, to pay the tuition for any resident student who attends an approved public high school, or public school of corresponding grade in another district, or an approved public academy. RSA 193:4 establishes the same requirement for school districts that do not maintain an elementary, middle or junior high school. Unless the resident district has entered into

a contract, as provided in RSA 194:22, parents may choose any public school for their child and the sending district must pay tuition based on the State Board of Education's determination of tuition for that school.

There are still some districts that do not assign their children to a school, but allow the parents to choose the school their children will attend as provided in RSA 194:27. Both RSA 194:27 and RSA 193:4 were amended in 2017 to include "a nonsectarian private school approved as a school tuition program by the school board pursuant to RSA 193:3, VII" in the options available to the parents. This is a result of the so-called Croydon Bill.

RSA 194:22 allows a school district to contract with an academy, high school or other literary institution for the education of the district's high school students. RSA 194:23 defines high school, and RSA 194:23-e provides that in order to accept tuition students, a public high school must be approved by the State Board of Education as being in compliance with the requirements of RSA 194:23. If the contract is approved by the State Board, the high school "shall be deemed a high school maintained by the district."

Contracts entered into under RSA 194:22 limit the choice of schools to which the district must pay tuition to those with which the district has contracted. Some school districts have entered into contracts under RSA 194:22 with more than one other school district allowing the parents to choose between the various schools with which the district has contracted. Some school boards limit the amount of tuition the district will pay to what the least expensive school with which the district has contracted charges for tuition, with parents paying the difference. Not everyone agrees it is legal to charge parents for part of public school tuition, but so far this practice has not been challenged either at the State Board level or in court.

CHARTER SCHOOLS

Parents may also choose to send their child to a charter school, as provided in RSA 194-B:2. For the 2017-18 school year there were 25 charter schools open to students operating in New Hampshire. Three more approved public charter schools are expected to open in the Fall 2018. The resident school district is not responsible for transportation to a charter school located outside its boundaries, but must provide the same transportation it provides to students attending the district's public schools to students attending a charter school within the district. The resident school district is responsible for special education costs for students attending a charter school.

The state is supposed to pay public charter schools adequacy as determined under RSA 198:40-a, II (a), (c), and (e) plus an additional grant of $3,286.00 for the fiscal year ending June 30, 2018 and $3,411.00 for the fiscal year ending June 30, 2019. RSA 194-B:11, I. Therefore, for the fiscal year ending June 30, 2018, charter schools authorized by the State Board, received $3,561.27 in adequacy money for each student in the average daily membership in attendance plus another $3,036.00 for each student who is a resident of New Hampshire attending a charter public school. For the upcoming fiscal year ending June 30, 2019, the annual charter school grant increases to $3,411.00 per pupil. There is a separate tuition calculation for the Virtual Learning Academy Charter Schools (VLACS). RSA 194-B: 11, I (b), (1), (B).

VOUCHERS: RSA 77-G

The legislature enacted a voucher program in June 2012, overriding a gubernatorial veto. The program creates a tax credit for business organizations and enterprises that contribute to scholarship organizations approved by the New Hampshire Department of Revenue Administration (DRA) to award scholarships to eligible students under the program. *See* RSA 77-G:1, VIII, XVII. For each

contribution made to a qualifying scholarship organization, "a business organization or business enterprise may claim a credit equal to 85 percent of the contribution against the business profits tax due . . . or against the business enterprise tax due . . . or apportioned against both [taxes]." RSA 77-G:3.

The program capped "[t]he aggregate of tax credits" granted to all taxpayers at $3.4 million for the first program year, which began on January 1, 2013, and at $5.1 million for the second program year. RSA 77-G:4, I. For subsequent years, the aggregate of tax credits may not exceed the amount allowed for the prior year plus an adjustment "if the amount of the total donations used for scholarships exceeds 80% of the current program year's tax credits allowed, the aggregate of tax credits allowed for the next program year shall increase by 25% . . .".

An eligible student may receive a scholarship through the program "to attend (1) a nonpublic school . . . or (2) a public school located outside of the [student's] school district," or to defray homeschooling expenses. RSA 77-G:2, 1(a). In the program's first year, "[t]he average value of all scholarships awarded by a scholarship organization," excluding scholarships to homeschool students, was not to exceed $2,500. RSA 77-G:2, 1(b). In the first year of the program, homeschooled students were eligible to receive scholarships equal to twenty-five percent of $2,500, or $625. RSA 77-G:1, VI. During 2017, the legislature amended RSA 77-G:1, VI to expand the definition of educational expenses to include "the cost of college or university, accredited tutor or tutoring facility, or distance education program." It also eliminated the 25% limit on the amount of educational expenses for home educated students. The program requires DRA to adjust those amounts annually based on changes in the consumer price index. RSA 77-G:2, I(b).

The program also requires the State Department of Education to issue "scholarship stabilization grant[s]" to school districts when "the combined amount of reductions in adequacy cost

pursuant to RSA 77-G:7 from students receiving scholarships . . . and who were in attendance in that district in the year prior to receiving the scholarships" is "greater than ¼ of one percent of a school district's total voted appropriations for the year prior to the scholarship year." RSA 77-G:8, I.

The constitutionality of RSA 77-G was challenged in Duncan v. State, Strafford County Superior Court, Docket No. 219-2013-CV-00011 (June 17, 2013) because the statute allowed scholarship funds to be paid for religious schools. The trial court concluded that the program violates Part II, Article 83 of the State Constitution, which prohibits using money raised by taxation for sectarian schools. The trial court determined that the tax credits constitute "money raised by taxation" because they comprise "[m]oney that would otherwise be flowing to the government." The trial court ruled that the tax credits violate the prohibition against applying "money raised by taxation" for use by religious schools because they "inevitably go toward educational expenses at nonpublic 'religious' schools." After concluding that the provisions in RSA 77-G that violate Part II, Article 83 of the State Constitution are severable from the remaining provisions, the trial court ordered that "the program may proceed, except that scholarship monies may not go to 'schools or institutions of any religious sect or denomination' within the meaning of . . . Part II, Article 83, and the associated tax credits are likewise disallowed."

The New Hampshire Supreme Court reversed the trial court on the basis that the petitioners did not have standing. Duncan v State, 166 N.H. 630 (2014). We are not aware of any new challenge to the constitutionality of RSA 77-G.

According to the list of scholarships awarded by the Children's Scholarship Fund of New Hampshire for the program year January 1, 2017 to December 31, 2017, 28 of the 50 schools for which scholarships were awarded are sectarian schools. In addition, fifty homeschoolers received funds. Of the number of scholarships awarded, approximately 147 out of 257 scholarships awarded

went to students attending religious schools. The amounts awarded varied, between a low of $247.95 to a maximum of $4,728.00. The range for homeschoolers was from a low of $225.00 to a high of $675.00.

CROYDON BILL: RSA 189:1-A, RSA 193:3, RSA 193:4, RSA 194:22, RSA 194:27, RSA 198:4

The Croydon Bill, 2017, Chapter 182, amended a number of statutes to allow some school districts to contract with private schools for the education of their children.

RSA 193:3 was amended by the addition of paragraphs VI and VII. 193:3, VI now reads, in pertinent part "if there is no public school for the child's grade in the resident district, the school board may assign the child to another public school in another school district or to any nonsectarian private school that has been approved as a school tuition program by the school board."

In applying RSA 193:3, VI, the first question that arises is what is meant by "if there is no public school for the child's grade in the resident district." When a school district contracts with another school district for the education of its students under RSA 194:22 and RSA 193:4, the receiving district school is considered a school maintained by the sending district for purposes of assignment of pupils. However, there is no school physically located in the sending district. Does that mean that there is no public school for the child's grade in the resident district or does the existence of the contract mean that there is a public school in the child's grade in the resident district? This problem may sort itself out, since receiving districts which have entered into contracts with sending districts that do not maintain a high school or school of corresponding grade can hold the sending districts to the contracts, until

they expire, even if the sending district school boards decide they want to take advantage of the Croydon Bill to send their children to private school.

Another question that arises in applying RSA 193:3, VI is whether school districts, with no schools that are currently members of a cooperative school district, will seek to withdraw in order to take advantage of the opportunity to contract with a private school. Since withdrawal from a cooperative school district still requires approval of a majority of voters of the entire coop, withdrawal of small districts with no schools may not become a problem. RSA 195:29. See also: 2018, Ch. 1.

The rest of RSA 193:3, VI dealing with raising and appropriating money to fund the contract with a private school provides that the sending district "may raise and appropriate money for the purposes of the contract, if the school district does not have a public school at the pupil's grade level . . .". Again, does the school district, which has entered into a contract with another school district under RSA 194:22 or RSA 193:4 "have" a public school at the pupil's grade level? Is there any significance to the difference in wording, specifically "if there is no public school" as opposed to "does not have a public school"?

RSA 193:3, VI and VII also define the process for approving a school as a tuition program. "Approved as a school tuition program" means a school that has been approved and contracted by the school board to provide students with the opportunity to acquire an adequate education as defined by RSA 193-E:2. A school meeting this definition is required to submit an annual student performance progress report in a format chosen by the sending district school board that demonstrates that students are afforded educational opportunities that are substantially equal in quality to state performance standards for determining an adequate education to the sending district school board.

A private school that receives tuition program students must:

(a) Comply with statutes and regulations relating to agency approvals such as health, fire safety, and sanitation;

(b) Be a nonsectarian school;

(c) Be incorporated under the laws of New Hampshire or the United States; and

(d) Administer annual assessments in reading and language arts, mathematics, and science. RSA 193:3, VII.

RSA 193:1, l(d), RSA 193:4, RSA 194:27, and RSA 198:4 were also amended to include language regarding nonsectarian private schools approved as tuition programs by the school board.

RSA 193:3 REASSIGNMENT STATUTE

Parents have the ability under RSA 193:3 to request that their children be assigned to schools of the parents' choice as either a transfer based upon the best interest of the student or a transfer based upon a manifest educational hardship. Best interest and manifest educational hardship reassignments must meet certain requirements which should limit a parent's use of those reassignments as a school choice mechanism.

If a best interest or manifest educational hardship request is approved by the district, parents are responsible for the costs of transportation.

The manifest educational hardship statute states "Children with disabilities as defined in RSA 186-C:2 shall be accorded a due process review pursuant to rules adopted under RSA 186-

C:16." RSA 193:3, I. Similarly, the best interest statute also includes a provision on special education students that states "Nothing in this paragraph shall alter or impair the right of a child with a disability as defined in RSA 186-C:2 to be accorded a due process review pursuant to rules adopted under RSA 186-C:16." RSA 193:3, III(f). The placement of a special education student by the special education team is not deemed a change of school assignment under RSA 193:3.

The parents of special education students are not prohibited from requesting best interest or manifest educational hardship transfers. However, best interest and manifest educational hardship requests cannot be used to circumvent the special education process. That means that a parent cannot use the best interest or manifest educational hardship statutes to obtain a placement that has not been approved by the student's special education team. It also means that neither the superintendent nor local school board can overrule the decision of the special education team.

Best interest and manifest educational hardship requests for special education students must be approved by the special education team in addition to the parent obtaining the approvals required by the applicable best interest and manifest educational hardship statutes.

A. Best Interest

RSA 193:3, III permits a parent to request a reassignment to another public school if it is in the student's best interest. The statute does not define "best interest". The State Board has not been granted authority to adopt regulations defining or regulating best interest reassignments. Best interest assignments are made in the sole discretion of districts.

School boards must adopt policies on best interest reassignments. Policies adopted by school boards should define the best interest standard. That definition should make it clear that

"best interest" does not mean that a parent has the right to select whichever public school the parent prefers or that a student has the right to attend a school that the parent or student believes is better suited to allow the student to reach his or her full potential. Rather, best interest should be defined to require that the student's education will be adversely affected if the student continues to attend the public school to which the student is assigned.

Students reassigned under the best interest statute are counted in the average daily membership in residence of the student's resident district. The resident district must pay tuition to the district to which the student is reassigned. The tuition is established by agreement of the superintendents and can be waived by the receiving district's superintendent based on good cause shown or school board policy.

Until August 8, 2015, RSA 193:3, III authorized superintendents to reassign students based upon the best interest of the student without any approval by the school board. Effective August 8, 2015, the New Hampshire Legislature amended RSA 193:3, III to require a vote of the school board to reassign a pupil and to approve a request from another superintendent to accept a transfer of a student based on the best interest of the student. Therefore, a district cannot reassign a student under the best interest statute unless both the superintendent and school board approve the request. The reassignment must also be approved by the school board of the receiving district. If the superintendent does not approve a best interest request, the request does not need to be heard by the school board. Whenever a best interest request is denied, the district should inform the parents of the right to request a manifest educational hardship transfer and provide a copy of that policy.

The State Board has found that it does not have jurisdiction to review a school board or superintendent's decision to deny a best interest transfer. RSA 193:3, III(g). Parent/School

District, SB-FY-18-007-0012 (November 9, 2017). Therefore, the denial by a superintendent or a school board of a best interest transfer cannot be reviewed by the State Board.

The inability of the State Board of Education to review a local school board's decision to deny a best interest transfer request is a significant limitation on parents' ability to use best interest transfers as a school choice mechanism.

B. Manifest Educational Hardship

Parents may request that their children be assigned to attend another public school or public academy under the manifest educational hardship statute, RSA 193:3, I. The State Board of Education has statutory authority to hear manifest educational hardship appeals from a local school board's decision to deny the request. RSA 193:3, II requires school boards to adopt a manifest educational hardship policy "consistent with the state board rules, which allow a school board, with the recommendation of the superintendent to take appropriate action including, but not limited to, assignment to a public school in another district when a manifest educational hardship is shown."

If a student is assigned to attend school in another district, the district in which the child resides must pay tuition as computed in RSA 193:4 to the receiving district. RSA 193:4 provides that tuition is computed by the receiving district's current expenses of operating, except for the transportation costs, as estimated by the State Board for the preceding school years.

Parents may view the manifest educational hardship statute as a way to choose a school that they find more suitable. However, the manifest educational hardship statute if properly applied only permits reassignments in limited circumstances that meet the definition of manifest educational hardship.

RSA 193:3 does not define "manifest educational hardship". However, statutory history, case law, and State Board of Education decisions and regulations define what constitutes a "manifest educational hardship" under RSA 193:3, I.

1. Statutory History

Over the years, the Legislature has amended RSA 193:3 to tighten the standard for reassignment from best interest to manifest hardship and now manifest educational hardship.

From 1921 until 1969, the statute provided that the State Board of Education could reassign a child to a school other than the school to which the child was assigned, if it was in the best interest of the child. From 1969 until 1973, RSA 193:3, I specified that the State Board could reassign a child based upon manifest hardship. In 1973, RSA 193:3, I was amended. From 1973 to the present, the statute permits the State Board to reassign a child only due to manifest **educational** hardship. Lisbon Regional School District, 114 N.H. 674, 676 (1974); Laws of 1969, 356:2; Laws of 1973, 240:01 (emphasis added).

2. Case Law

Two New Hampshire Supreme Court cases discuss the meaning of the hardship language in RSA 193:3, I. Unfortunately, both cases were decided under the statute as amended in 1969 which only required a manifest hardship to the child. The two New Hampshire Supreme Court cases discuss what is meant by "manifest hardship," but not what is meant by "manifest **educational** hardship."

In the first case, Landaff School District v. State Board of Education, 111 N.H. 317 (1971), the State Board of Education had ordered reassignment of two children from the Landaff Blue School to the Lisbon Regional Elementary School under RSA 193:3. The Court found that

manifest hardship relates to the children sought to be transferred, and not to the other children already attending the school. Id. at 319.

The second case, Lisbon Regional School District v. Landaff School District, 114 N.H. 674 (1974), involved the same two Districts and, perhaps, the same children. Although the case was decided by the New Hampshire Supreme Court in 1974, the school years in question were 1969-70, 1970-71 and 1971-72. Therefore, the Court had to interpret the language of the 1969 version of the statute, which was "manifest hardship," and not "manifest **educational** hardship." The Court explained that "hardship" means some difficulty or deprivation, involving the physical or mental condition of the child, or the availability at the school to which transfer is sought, of courses better suited to the educational needs of the particular child.[1] Id. at 677. The Court also explained that "manifest," as used in the statute, means only that the hardship is one "which is apparent and obvious to the understanding," and does not define the severity or nature of the hardship itself. Id.

3. State Board Decisions

The State Board has consistently found that to establish a manifest educational hardship, the parents must prove that the hardship "is likely to affect the **educational** needs of a **particular** child, not general conditions or circumstances which affect or could affect numerous children attending a given school." Franklin School District v. Hill School District, SB-014-97 (Jan. 26, 1998) (emphasis added). In several cases, the State Board has found that the unavailability of courses or activities which apply to all students does not constitute a manifest educational hardship. Windham School

[1] The Court rejected the argument that RSA 193:3 was limited to the concept of manifest hardship in RSA 194:24 which permits students assigned to attend high schools under contract with the resident district to request a manifest hardship transfer based on the school's accessibility. Districts are not required to provide transportation to high school students. When the District provides transportation, the type of hardship in RSA 194:24 is not present.

Board, SB-FY-09-01-011 (May 13, 2009) (failure to offer varsity sports is not a manifest educational hardship); Madison School Board, SB-FY-09-03-014 (August 12, 2009) (failure to have Latin classes was not a manifest educational hardship for student interested in veterinary career); Fremont School Board, SB 01-08 (August 22, 2001) (failure to offer football was not a manifest educational hardship).

More recently the State Board rejected a parent's claim that a lack of morning and afternoon day care for the child was a manifest educational hardship. Student/School Board, SB-FY-18-04-016 (July 11, 2018). The District provided evidence that the lack of day care was an issue that working parents in the community faced on a daily basis. The State Board found since the lack of day care was a general condition, it did not meet "the particular need" requirement. The State Board also found that the provision of before and after-school day care is "a parental duty, not a governmental one and it also does not constitute an *educational* need that is the responsibility of a local school district to remedy." Id. at p. 7 (emphasis in original).

4. Ed 320

Effective March 23, 2018, the State Board adopted Ed 320 (copy in appendix) which requires parents to demonstrate by clear and convincing evidence that their manifest educational hardship request meets specific factors. Those factors are that:

1) A compelling amount of a child's academic, physical, personal or social needs cannot be met by the assigned school or are not found within the student body of the assigned school;
2) The attendance at the assigned school will impair the educational progress of the pupil; and
3) Another public school or public academy, either within the district or in another district, can reasonably meet the pupil's educational needs. Ed 320.01(f)(1)-(3).

The regulation also states "To establish a manifest educational hardship, as set forth in (f)(1)-(3), the person having custody shall demonstrate that attendance at the assigned school will have a detrimental effect on the child's education."

The new regulation defines education broadly to include the child's academic, physical, personal, or social needs.

Both the statute and regulation require that the superintendent recommend the manifest educational hardship reassignment. RSA 193:3, II and Ed 320.01(d).

The parent must prove each of the three elements listed in Ed 320.01(f) by clear and convincing evidence. Clear and convincing evidence is an intermediate standard of proof between the civil standard of a preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Clear and convincing evidence is evidence that persuades the fact-finder that the proposition is highly probable or must place in the fact-finder the abiding conviction of the truth of the factual contentions. Speculative evidence does not meet the standard.

5. Practical Tips for Manifest Educational Hardship Requests

Parents have a statutory right to appeal the local school board's denial of a manifest educational hardship request to the State Board of Education. Review of manifest educational hardship appeals to the State Board are limited to the evidence presented to the local school board. Therefore, it is important that the parent and superintendent present all relevant information to the local school board.

The district's manifest educational hardship policy should require parents to submit with their request the reasons for the request and any documents that support the request. That information provides the superintendent an opportunity to review the request and consult with staff prior to the

school board's hearing. That advance review is important because the superintendent is required to make a recommendation to the school board on the request.

All manifest educational hardship requests must be heard by the local school board even if the superintendent does not recommend the request.

At the school board hearing, the parent must demonstrate by clear and convincing evidence that the factors in Ed 320.01 are met.

The superintendent should present evidence at the local school board hearing that would assist the school board in making its decision. If the superintendent is not recommending that the school board grant the manifest educational hardship transfer, the superintendent must explain the reasons for that recommendation and provide the school board with the information to support the superintendent's recommendation. That information includes testimony of school staff (such as the principal or guidance counselor). The superintendent should also present information on how the school can meet the student's needs; whether the reason for the request is a general condition or circumstance which affects or could affect numerous children at the school; whether the request is based upon an educational need; whether the stated educational need is particular to the child; the student's educational progress (provide grades and other evidence of progress); a comparison of the two schools; and whether the school to which assignment is sought can meet the student's educational needs.

The school board must record the hearing so that a transcript can be prepared should the parent appeal to the State Board. The transcript is submitted to the State Board hearing officer as a detailed record of the hearing. Meeting minutes do not provide the detail required for the State Board to review everything that transpired at the school board hearing.

With a detailed transcript of the local hearing, State Board hearing officers will often confine the State Board appeal to a review of the transcript, documents submitted to the local school board, the parent's request, and the local school board's decision. Witnesses do not need to testify.

PART Ed 320 MANIFEST EDUCATIONAL HARDSHIP

Ed 320.01 Change of School Assignment.

(a) Any person having custody of a child may apply to the school board of residence to change the child's school assignment if the person having custody thinks that the child's attendance at the assigned school will result in a manifest educational hardship to the child.

(b) A person having custody of said child may apply for a change of school assignment to:

(1) Attend another public school or public academy in the same district; or

(2) Attend a public school or public academy in another district.

(c) To establish a manifest educational hardship, as set forth in (f)(1)-(3), the person having custody shall demonstrate that attendance at the assigned school will have a detrimental effect on the child's education. The person having custody may also demonstrate that another public school or public academy, either within the district or in another district, can reasonably meet the child's educational needs.

(d) Each school board shall establish a written policy, which authorizes the school board to act, with the recommendation of the superintendent, on an application to change a child's school assignment to another public school or public academy within the district or to request a change of assignment to a public school or public academy in another district when a manifest educational hardship has been demonstrated.

(e) Upon receipt of a request from a person having custody for a change of a child's school assignment based on a claim of a manifest educational hardship, the school board shall order a hearing, pursuant to their local rules, within 30 days.

(f) The local school board shall issue a finding of manifest educational hardship if it determines that there is clear and convincing evidence that:

(1) A compelling amount of a child's academic, physical, personal, or social needs cannot be met by the assigned school or are not found within the student body of the assigned school;

(2) The attendance at the assigned school will impair the educational progress of the child; and

(3) Another public school or public academy, either within the district or in another district, can reasonably meet the child's educational needs.

(g) If a school board determines that manifest educational hardship has been found, the school board shall issue a waiver of the school assignment and the child shall be reassigned to a public school or public academy, in the district or in another district, which can reasonably meet the child's educational needs.

(h) If a person having custody is aggrieved by the decision of the school board, he or she may appeal to the state board in accordance with the provisions of Ed 200.

Source. #6710, eff 5-1-98, EXPIRED: 5-1-06

New. #9158, eff 5-16-08, EXPIRED: 5-16-16

New. #11139, INTERIM, eff 7-16-16, EXPIRED: 1-12-17

Source. #12498, eff 3-23-18