



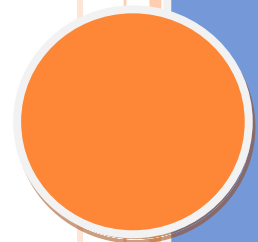
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2021 LEGISLATIVE UPDATE

Unlike 2020, when there was not much legislation enacted, the New Hampshire Legislature in 2021 passed a number of laws affecting the operation of school districts. This memorandum summarizes what we believe to be the most significant 2021 New Hampshire Legislation impacting school districts. As always, please do not hesitate to reach out to us with any questions or concerns regarding the new legislation.

By Anthony M. Muir

8/30/2021



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I. Personnel

Wage and Hour Records (Chapter 9)

Effective June 22, 2021, RSA 279:27 was amended to permit employers to sign, acknowledge, approve and retain wage and hour records electronically.

One Year Teaching Certificates (Chapter 28)

Effective July 5, 2021, RSA 189:39-b was amended to exempt individuals applying to teach a course in a CTE specialty area from the bachelor's degree requirement for a one-year certificate of eligibility to teach.

Criminal History Records Checks (Chapter 71)

Effective July 1, 2021, RSA 189:13-a, II and III were amended to:

1. Permit the superintendent to designate the assistant superintendent, head of human resources, the business administrator or finance director to receive and review an applicant's criminal history and record information;
2. Require the department of education to provide training in reading and interpreting criminal history records; and
3. Require the superintendent or designee of a school administrative unit or the chief executive officer of the chartered public school or public academy to complete training in reading and interpreting criminal history records.

Disqualifying Criminal Records (Chapter 142)

Effective September 21, 2021, RSA 189:13-a, V is amended to add human trafficking to the offenses that prevent a person from being hired by a school administrative unit, school district, chartered public school, or public academy.

Granite State Paid Family Leave Plan (Chapter 91:466-468)

Effective July 1, 2021, RSA 21, I:96-108, RSA 282-B and 77-E:3-e were added and RSA 400-A:32, III was amended to establish the Granite State Paid Family Leave Plan. The plan provides state-administered family and medical leave benefits to state employees and establishes a purchasing pool for non-state employees. Participation in the plan is optional.

II. Finance

Penalties for Failure to File Reports (Chapter 44)

Effective May 17, 2021, RSA 198:4-f was repealed and reenacted, RSA 189:28, I, RSA 189:28, IV, RSA 194-B:16, II, and RSA 198:4-d, were amended to change several of the requirements for reports filed with the department of education by educational agencies. The amendments specify that chartered and non-public schools are required to submit required statistical reports to the department of education.

Financial reports required by RSA 198:4-d, III are due no later than September 1st of each year, though the commissioner of the department of education may grant a 30-day extension for just cause. The commissioner may further extend the deadline when unforeseen or unusual circumstances prevent submitting the reports by the deadline. The commissioner is required to provide notice that all state education aid will be withheld until complete and accurate information is received.

Information relating to the fall enrollment, drop-outs, staffing census, and prior year annual safety reports as of October 1 of each school year, and other reports necessary to meet state and federal requirements as determined by the department, must be submitted to the department of education on or before the deadline established by the department.

Statistical reports necessary to compute the average daily membership must be submitted by the deadline established by the department of education.

The governing body of every public and chartered public school are required to submit the average teacher salary as of October 1 of each school year to the department of education on or before the deadline established by the department.

Nonpublic schools are required to submit the following: general statistics of nonpublic schools, nonpublic school restraint and seclusion collection data, general fall report of non-public schools, school emergency operation plan, and other reports necessary to meet state and federal requirements as determined by the department of education. If the governing body of a non-public school fails to submit the statistical reports by the established deadlines for two consecutive years, the commissioner may request the state board of education to revoke the enabling charter or approval.

RSA 194-B:16, II (f) and (g) was also added to make failure to file such reports reason for revocation of a chartered public school's charter.

Out-of-State Banks (Chapter 65)

Effective August 3, 2021, RSA 6:7, RSA 6:8, RSA 23:16, II, RSA 29:1, RSA 31:25, RSA 31:25-a, RSA 31:26, RSA 31:27, RSA 31:36, RSA 34:5, RSA 35:9, RSA 41:29, RSA 48:16, and RSA 197:23-a were amended to allow out-of-state banks with a branch in New Hampshire to accept deposits and investments of public funds from the state treasurer and city, town, and school district treasurers.

Apportionment of Costs in Cooperative School Districts (Chapter 80)

Effective August 17, 2021, RSA 195:8 and RSA 195:18, III(i) were amended to permit the apportionment formula for a cooperative school district to be subject to review 5 years after an article to continue the current formula was passed.

Municipal Finance (Chapter 105)

Effective August 30, 2021, RSA 35:15, III was amended to provide that capital reserve funds may be used for lease/purchase agreements.

Form of Municipal Budgets (Chapter 134)

Effective September 21, 2021, RSA 32:3, III, RSA 32:5, I, RSA 32:17, and RSA 32:22 are amended and RSA 32:5, X and RSA 32:3, VII and VIII are added to require towns or districts that use sub-accounts to budget or track financial data to make that information available for public inspection at the budget hearing and prior to and at the annual or special meeting at which time the budget or any appropriation is to be considered.

The amendments also require the governing body to incorporate any sub-accounts created by the budget committee into its budget software.

Governing bodies must also submit to the budget committee information in a format acceptable to the budget committee. The requirement can be satisfied by providing a knowledgeable person to attend budget meetings who has access to and the ability to provide the required information.

“Sub-account” means an optional level of accounting, one or more levels below the account level. Sub-accounts may be used to budget and track expenses when several different activities are funded by the same account. Sub-accounts may be created by the town or district under the authority of the budget committee, or the governing body if there is no budget committee, but must support the numbering classification system established in the uniform chart of accounts as established by the department of revenue administration in accordance with RSA 21-J:13, IV. The amendments do not require the disclosure of any information or data restricted from disclosure by any other statute.

III. Students

Student Assessment Information and Data (Chapter 20)

Effective July 5, 2021, 193-C:12 was amended to permit the department of education to collect student address information for the purpose of distributing assessment results. The department may collect, and districts are to distribute, student address information from the individual school districts solely for the purpose of effectuating the distribution of assessment results and comparative data. Additionally, assessment reports are required to be provided to parents in an informative and instructional manner to help children meet challenging state academic standards and advance student learning.

Reducing School Food Waste (Chapter 45)

Effective July 16, 2021, RSA 194:3-e was added to permit a school to partner with a nonprofit or to implement a program on its own to make leftover school food, that was prepared but never served, into frozen to-go meals or portions for distribution in compliance with state food safety regulations and FDA requirements and guidelines. The school may send the frozen meals or portions home with any child whose family indicates a desire to participate in such a program.

Coursework at Approved Schools (Chapter 82)

Effective August 17, 2021, RSA 193-E:3-f was added to require the principal or other administrator of a high school to grant a student credit toward high school graduation for similar courses and programs that have been satisfactorily completed at other approved schools or to provide reasonable justification for denial. Approved schools include all New Hampshire public schools, including chartered public schools, public academies, approved public or private tuition program schools, and all schools in Vermont and Maine that are members of an interstate school district with schools in New Hampshire.

Best Interest, Manifest Educational Hardship and Approved Tuition Programs (Chapter 84)

Effective August 17, 2021, RSA 193:3 on best interest and manifest educational hardship reassignments was amended as follows:

1. Allows parents to seek reassignment to an approved private school.
2. If the student is reassigned as the result of a best interest determination to an approved private school, the private school may charge tuition to the parent or may enter into an agreement for payment of tuition with the school district in which the child resides.

3. Makes it clear that the decision by a school district or a public academy to deny enrollment of a non-resident may not be based, in whole or in part, on whether such pupil is a child with a disability as defined in RSA 186-C:2, I, or a child that requires an accommodation under the Rehabilitation Act of 1973. If a parent or guardian believes the denial was based upon the child's disability, the parent may appeal the decision to the state board of education consistent with the provisions of RSA 21-N:11, III or file a complaint with the state commission for human rights under RSA 354-A:28.
4. If the student is assigned to an approved private school under the manifest educational hardship determination and the private school agrees to enroll the child, it may charge tuition to the parent or may enter into an agreement for payment of tuition with the school district in which the child resides.

The Croydon statute was amended to permit school boards to enter into tuition agreements with sectarian and non-sectarian private schools.

Gifted Students (Chapter 139)

Effective July 23, 2021, RSA 189:29-b was added to require all public schools to submit annual reports to the department of education detailing the policies, programs, and procedures that are in place to identify and accommodate the needs of gifted and talented students. "Gifted and talented student" means a student identified as having unique academic, artistic, or athletic potential according to assessments selected and administered locally. The requirement to submit a report starts in the 2022-2023 school year, and the annual reports must be submitted by August 1 of each year.

The amendment also requires the department of education to develop a standardized format for reporting such information and to conduct an annual reassessment of such format to ensure that the information reported is useful.

Special Education Burden of Proof (Chapter 158)

Effective July 29, 2021, RSA 186-C:16-b, III-a was added to provide that in all special education hearings the school district will have the burden of proof, including the burden of persuasion and production, of the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden will be met by a preponderance of the evidence.

Additionally, the chapter establishes a committee to study special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education. A report is due to the Legislature and Governor by November 1, 2021.

Private Right of Action for Bullying and Cyberbullying (Chapter 164)

Effective July 30, 2021, RSA 193-F:9 was repealed and reenacted to provide that any person aggrieved as a result of gross negligence or willful misconduct in violation of any provision of Pupil Safety and Violence Prevention Act (RSA 193-F:4) may initiate an action against a school district or chartered public school and may recover court costs and reasonable attorney's fees as the prevailing party. "Gross negligence" means deliberate indifference.

Civics Competency Assessment (Chapter 157)

Effective July 1, 2023, RSA 189:11, II was amended to require that for high school students to be eligible for a graduation certificate, a student must attain a locally sanctioned passing grade on the competency assessment, and a grade of 70 percent or better on the 128 question civics (history and government) naturalization examination developed by the 2020 United States Citizen and Immigration Services. Schools may modify the naturalization examination for a child with a disability in accordance with the child's IEP.

Dual and Concurrent Enrollment (Chapter 210)

Effective October 9, 2021, RSA 188-E:2, VIII(b), RSA 188-E:3, I, RSA 188-E:8, RSA 188-E:10, I, RSA 188-E:10-b, III, RSA 188-E:10-b, RSA 188-E:12, RSA 188-E:22, I(e), RSA 188-E:26, RSA 188-E:28, I, RSA 193-E:3, RSA 2019, 247:3, XVI, RSA 2019,247:4, I, RSA 188-E:26, and RSA 188-E:28, I are amended to add "career and technical education courses" and "career path opportunities" to the dual enrollment purposes and program."

Additionally, beginning in September 2021, and each year thereafter, school districts are required, for entering high school freshman to: assess student career interests; document school pathways to career readiness credentials; advise all entering high school students how to achieve a career ready credential upon graduation; and record on a student's transcript progress towards the credential. School districts are required to report the following annually: the number of students who complete CTE; the number of dual enrollments, concurrent enrollments, extended learning opportunities, and work based learning enrollments; and the number of career ready credentials awarded.

Emergency Plans for Sports Related Injuries (Chapter 210)

Effective September 1, 2022, RSA 200:40-c is added to require the local board of each school district or the governing body of each nonpublic school that includes any of the grades 4 through 12, to establish an emergency action plan for responding to serious or potentially life-threatening sports related injuries. Each plan is required to:

- (a) Document the proper procedures to be followed when a student sustains a serious injury or illness while participating in school sponsored sports or other athletic activity.

- (b) List the employees, team coaches, and licensed athletic trainers in each school who are trained in first aid or cardiopulmonary resuscitation.
- (c) Identify the employees, team coaches, or licensed athletic trainers responsible for carrying out the emergency action plan.
- (d) Identify the activity location, address, or venue for the purpose of directing emergency personnel.
- (e) Identify the equipment and supplies and location thereof needed to respond to the emergency.
- (f) Identify the location of any automated external defibrillators and personnel trained in the use of the automated external defibrillator.
- (g) Document policies related to cooling for an exertional heat stroke victim consistent with guidelines established by the American College of Sports Medicine and the National Athletic Trainers' Association.

The plan is required to be posted within each school and disseminated to, and coordinated with emergency medical services, fire department, and law enforcement.

In addition, each school district is required to adopt procedures for obtaining student-participant medical information relative to any injury or illness related to or involving any head, face, or cervical spine, cardiac injury or diagnosis, exertional heat stroke, sickle cell trait, asthma, allergies, or diabetes for each student athlete prior to engaging in activities; policies related to hydration, heat acclimatization and wet bulb globe temperature guidelines as established by the American College of Sports Medicine and the National Athletic Trainers' Association; and procedures for students to return to play after a sports or illness-related injury, which must be kept on file by each school district and made available to the department of education and public upon request. Access, filing, and confidentiality of student-participant medical information is required to be managed in accordance with the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). Each plan must be added to the school's emergency response plan and adopted procedures is required be reviewed annually and updated as necessary.

Environmental Science Required for Adequate Education **(Chapter 210)**

Effective October 9, 2021, RSA 193-E:2, III and RSA 193-E:2, VI-VII are amended to add environmental science, outdoor recreation, and environmental education to the required components of an adequate education.

IV. Voting and Elections

School Board Vacancies (Chapter 42)

Effective July 16, 2021, RSA 671:33, V was added to provide that any vacancies occurring in school district offices between the beginning of the filing period and the election may not be filled by official ballot until the following year.

Electronic Records (Chapter 67)

Effective August 9, 2021, RSA 294-E:17 and RSA 294-E:18 are amended to clarify that the department of information technology, in cooperation with the secretary of state and the department of administrative services, may set standards for the creation, retention, and acceptance of electronic records by government agencies.

Collective Bargaining Special Meetings (Chapter 77)

Effective August 17, 2021, RSA 197:3, I(d) was added to prohibit the Superior Court from allowing an emergency special meeting if the emergency involves a collective bargaining agreement that was voted down at the regular meeting, including a collective bargaining agreement modified after the regular meeting.

V. Right-to-Know Law

Minutes in Nonpublic Sessions and Remote Meetings (Chapter 163)

Effective January 1, 2022, RSA 91-A:3, III is amended to require that for all meetings held in nonpublic session where the minutes or decisions were determined to not be subject to full public disclosure, a list of the minutes or decisions must be kept and the list must be made available as soon as practicable for public disclosure. The list must identify the public body, the date and time of the meeting in nonpublic session, the specific exemption which is relied upon for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session for the acquisition, sale or lease of property must be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

Effective July 30, 2021, RSA 91-A:5, XII was added to exempt materials falling within the attorney-client privilege or attorney work product doctrine from public disclosure under the Right-to-Know Law.

Effective September 28, 2021, a committee is established to review virtual meetings and remote access to meetings under the Right-to-Know Law.

Sealed Minutes in Nonpublic Session (Chapter 172)

Effective January 1, 2022, RSA 91-A:3, II(m) is added to provide that the consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances may be acted on in nonpublic session. However, any vote on whether to disclose minutes must take place in public session.

VI. Miscellaneous

Innovation Schools (Chapter 27)

Effective July 5, 2021, RSA 194-E was added to permit public schools to submit an innovation plan to its local school board. A group of public schools of a school district or in multiple districts that share common interests, such as geographical location or educational focus, or that sequentially serve classes of students as they progress through elementary and secondary education may jointly submit to their local school board or boards a plan to create an innovation school zone.

Each innovation school plan may include the following information:

- (a) A statement of the public school's mission and why designation as an innovation school would enhance the school's ability to achieve its mission.
- (b) A description of the innovations the public school would implement, which may include, but not be limited to, innovations in school staffing, curriculum and assessment, class scheduling, use of financial and other resources, and faculty recruitment, employment, evaluation, and compensation.
- (c) A listing of department of education's administrative rules from which the schools are requesting a waiver and rationale for the waiver request including how and why the waiver is needed to implement its identified innovations.
- (d) A listing of the programs, policies, or operational documents within the public school that would be affected by the public school's identified innovations and the manner in which they would be affected. The programs, policies, or operational documents may include, but need not be limited to:
 - 1) The research-based educational program the public school would implement.
 - 2) The length of school day and school year at the public school.

- 3) The student promotion and graduation policies to be implemented at the public school.
 - 4) The public school's assessment plan.
 - 5) The proposed budget for the public school.
 - 6) The proposed staffing plan for the public school.
- (e) An identification of the improvements in academic performance that the public school expects to achieve by implementing the innovations.
 - (f) An estimate of the cost savings or increased efficiencies, or both, if any, the public school expects to achieve by implementing its identified innovations.
 - (g) A statement of the level of support for designation as an innovation school or school zone demonstrated by students and parents of students enrolled in the public school, and the community surrounding the public school.
 - (h) A description of any provision of the collective bargaining agreement in effect for the personnel at the public school that would need to be waived or modified for the public school to implement its identified innovations.
 - (i) Any additional information required by the local school board of the school district in which the innovation plan would be implemented.

Each plan for creating an innovation school zone submitted by a local school board through collaboration with a group of public schools, may include the information discussed above and may also include the following additional information:

- (a) A description of how innovations in the public schools in the school innovation zone would be integrated to achieve results that would be less likely to be accomplished by each public school working alone.
- (b) An estimate of any economies of scale that would be achieved by innovations implemented jointly by the public schools within the innovation school zone.
- (c) A statement of the level of support for designation as an innovation school demonstrated by students and parents of students enrolled in the public school, and the community surrounding the public school based upon the public hearing.

The local school board is required to hold a public hearing on the plan and must either approve or reject the innovation plan within 60 days after receiving the plan. If the local school board rejects the plan, it is required to provide to the public school or group of public schools that submitted the plan a written explanation of the basis for its decision. A public school or group of public schools may resubmit an amended

innovation plan or amended plan for creating an innovation school zone at any time after denial. If the local school board approves the plan, it may proceed to seek designation of the school as an innovation school or innovation school zone.

In considering or creating an innovation plan or a plan for creating an innovation school zone, each local school board may consider innovations in the following areas:

- (a) Curriculum and academic standards and assessments.
- (b) Accountability measures, including but not limited to expanding the use of a variety of accountability measures to more accurately present a complete measure of student learning and accomplishment.
- (c) Provision of services, including but not limited to special education services, services for gifted and talented students, services for students for whom English is not the dominant language, educational services for students at risk of academic failure, expulsion, or dropping out, and support services provided by the department of health and human services or county social services agencies.
- (d) Teacher recruitment, training, preparation, and professional development.
- (e) Teacher employment.
- (f) Performance expectations and evaluation procedures for teachers and principals.
- (g) School governance and the roles, responsibilities, and expectations of principals in innovation schools or schools within an innovation school zone.
- (h) Preparation and counseling of students for transition to higher education or the work force.

Each public school and each local school board may seek and accept public and private gifts, grants, and donations to offset the costs of developing and implementing innovation plans and plans for creating innovation school zones.

A local school board may seek an innovation school or school zone designation by the state board.

A local school board that seeks designation of an innovation school or school zone must submit one or more innovation plans to the department for review and comment. Within 45 days after receiving a local school board's plan, the department of education is required to respond to the local school board with any suggested changes or additions to the plan, including but not limited to suggestions for further innovations or for measures to increase the likelihood that the innovations will result in greater academic achievement and growth within the innovation schools or innovation school zones.

Based on the department's comments, the local school board may choose to withdraw and resubmit its innovation plan or plan for creating an innovation school zone.

The local school board is required to forward the innovation plan to the state board for review and the state board will hold a public hearing on the plan. A representative of the department of education and a representative of the proposing local board is required to be present at the hearing.

Within 60 days after receiving a local school board's innovation plan or plan for creating an innovation school or school zone, the state board must either approve or reject the innovation plan. If the innovation plan is rejected, the local board may resubmit an amended innovation plan to the department at any time after rejection.

Upon the designation of an innovation school or school zone, the state board is required to waive compliance with any administrative rules specified in the local district plan. Each local district will continue to be subject to all laws and rules that are not waived by the state board. No waiver will be granted from any requirement of the federal Every Student Succeeds Act (ESSA).

The local board may submit a revised innovation plan under RSA 194-E:2 at any time if it is determined that additional waivers are required.

Two years after state board approval of the innovation plan and every two years thereafter, the local board is required to review the plan and the progress toward the plan objectives including improvements in academic performance and any cost savings or increased efficiencies, or both. The results of the local board review are to be provided to the department of education. If a local school board finds that the academic performance of students enrolled in the innovation school is not improving at a sufficient rate or that the plan is not achieving the planned results, the local school board may notify the department and state board that they wish to revoke the innovation status.

The department is required to review the results of each local board innovation plan review and analyze the results based upon data available to the department. The department may at any time conduct its own review of the innovation school or school zone performance. If the department finds that innovation plan performance is not satisfactory, they must notify the local board and the state board. The local board may respond or provide a revised innovation plan pursuant to RSA 194-E:2. The state board may revoke the innovation status at any time with notification to the local board and to the department.

The department of education is required to provide an annual report on innovation schools and school zones to the governor, the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house committees with jurisdiction over education, the state board of education, and the legislative oversight committee established in RSA 193-C:7.

The report is to include:

- (a) The number of school districts with innovation schools or school zones and the total number in the state.
- (b) The number of innovation schools and the number of schools within each innovation school zone.
- (c) The number of students in each innovation school or innovation school zone and a percentage of students in the local district.
- (d) An overview of innovations implemented.
- (e) An overview of the academic performance of the students served in innovation schools and innovation school zones, including a comparison between the students' academic performance before and after implementation of the innovations, and a comparison with the academic performance of similar schools.
- (f) A list of administrative rules waived.

Omnibus Budget Bill (Chapter 91)

Chapter 91, the Omnibus Budget bill contains a number of appropriations and amendments to existing legislation that impact school districts.

Chapter 91:58 provides for increased education grants to bring the State into compliance with the American Rescue Plan Act of 2021.

Chapter 91:59 makes an appropriation from the education trust fund to the department of education to fund operating costs for a student data collection and reporting system.

Chapter 91:60 makes an appropriation from the education trust fund to the department of education to fund operating costs for a student data collection and reporting system.

Chapter 91:62 authorizes expenditures for energy efficient school buses.

Chapter 91:313 increases the limit on the amount of the annual grant for leased space provided to a chartered public school from \$30,000 to \$50,000 in a fiscal year.

Chapter 91:314 adds RSA 198:15-a, V to require the department of education to develop and maintain a 10-year plan for school building grant projects. Potential projects shall include, but not be limited to, criteria pursuant to RSA 198:15-c, II(b). The 10-year plan is intended to create a method to identify and enhance school facilities in a safe, healthy, and efficient manner while providing adequate learning environments for New Hampshire's students. The 10-year plan shall be updated every biennium to provide the

department a summary of projects and school facility capital expenditures that are anticipated for the next 10 years. The plan shall identify new construction, renovation, and emergency projects, and describe the overall condition of projects contained in the plan.

Chapter 91:315 adds RSA 198:48-b, III to provide that the amount necessary to fund kindergarten adequate education grants shall be appropriated from the education trust fund; authorizes the governor to draw a warrant to eliminate a deficit if the balance in the education trust fund falls below zero; and makes an appropriation to the department of education for fiscal year 2020 kindergarten funding.

Chapter 91:316 makes an appropriation to the department of education for school building aid payments to school districts and suspends the cap on school building aid grants for the biennium ending June 30, 2023.

Chapter 91:322 reduces the amount of education tax revenue to be raised for the 2023 fiscal year.

Right to Freedom from Certain Types of Discrimination **(Chapter 91:297)**

Chapter 91:297 establishes and describes a right to freedom from certain types of discrimination based on age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin in public workplaces and education.

Effective June 25, 2021, RSA 354:29-34 were added to provide the following prohibitions:

a. Prohibition on Public Employers.

354-A:31 Prohibition on Public Employers. No public employer, either directly or through the use of an outside contractor, shall teach, advocate, instruct, or train any employee, student, service recipient, contractor, staff member, inmate, or any other individual or group, any one or more of the following:

- I. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, are inherently superior or inferior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;
- II. That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

III. That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or

IV. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others equally and/or without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.

b. Prohibition on the Content of Government Programs and Speech

354-A:32 Prohibition on the Content of Government Programs and Speech. No government program shall teach, advocate, or advance any one or more of the following:

I. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin are inherently superior or inferior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;

II. That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

III. That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or

IV. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others equally and/or without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.

c. Protection for Public Employees.

354-A:33 Protection for Public Employees. No public employee shall be subject to any adverse employment action, warning, or discipline of any kind for refusing to participate in any training, program, or other activity at which a public employer or government program advocates, trains, teaches, instructs, or compels participants to express belief in, or support for, any one or more of the following:

I. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin are inherently superior or inferior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;

II. That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

III. That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or

IV. That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others equally and/or without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.

Any person aggrieved by an act made unlawful under RSA 354-A:31-33 may pursue all of the remedies available under RSA 354-A (Human Rights Commission Complaint), RSA 491 (Superior Court action), RSA 275-E (Whistleblower's Protection Act), or RSA 98-E (Injunctive relief under the Public Employee Freedom of Expression Act), or any other applicable common law or statutory cause of action.

The new section also states the following:

II. Nothing in this subdivision shall be construed to prohibit racial, sexual, religious, or other workplace sensitivity training based on the inherent humanity and equality of all persons and the ideal that all persons are entitled to be treated with equality, dignity, and respect.

III. Nothing in this subdivision shall be construed to limit the academic freedom of faculty members of the university system of New Hampshire and the community college system of New Hampshire to conduct research, publish, lecture, or teach in the academic setting.

d. Prohibition on Teaching Discrimination

193:40 Prohibition on Teaching Discrimination.

I. No pupil in any public school in this state shall be taught, instructed, inculcated or compelled to express belief in, or support for, any one or more of the following:

- (a) That one's age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion or national origin is inherently superior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;
- (b) That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (c) That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or
- (d) That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.

II. Nothing in this section shall be construed to prohibit discussing, as part of a larger course of academic instruction, the historical existence of ideas and subjects identified in this section.

III. Any person claiming to be aggrieved by a violation of this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights as provided in RSA 354-A:34.

IV. Violation of this section by an educator shall be considered a violation of the educator code of conduct that justifies disciplinary sanction by the state board of education.

V. For the purposes of this section, “educator” means a professional employee of any school district whose position requires certification by the state board pursuant to RSA 189:39. Administrators, specialists, and teachers are included within the definition of this term.

Cooperative School Board Vacancies (Chapter 91:318)

Effective July 1, 2021, Chapter 91:318 amends RSA 671:33 to provide that members-at-large are included as representatives of the same town for the purpose of filling vacancies on cooperative school district school boards and budget committees. This results in at-large members of boards/committees having a more active role in filling vacancies.

Education Freedom Account Program (Chapter 91:431)

Chapter 91:431 adds RSA 194-F to establish the education freedom account program which permits the treasurer to transfer adequate education grants, plus any differentiated aid that would have been provided to a public school, to a scholarship organization for disbursement to parents to be used for certain educational purposes; appropriates the funds authorized under this program from the education trust fund; and authorizes the comptroller to transfer funds from the general fund to eliminate any deficit in the education trust fund created by the payment of grants or transfers of funds under the program.

Private School Approved as Tuition Program (Chapter 106)

Effective August 5, 2021, RSA 193:1, I(d), RSA 193:3, VI and VII, RSA 193:4, RSA 198:4, and RSA 194:27 were amended to delete the requirement that a private school be nonsectarian in order to be approved as a school tuition program.

National and State Mottos in Schools (Chapter 161)

Effective September 28, 2021, RSA 189:17-b is added to provide that notwithstanding any other provision of law to the contrary, no power or authority of the state of New Hampshire, or any political subdivision thereof, shall in any way restrict, or be construed to restrict, the authority of any school or school district to display the national motto, "In God We Trust," or the state motto, "Live Free or Die," in any school building.

Use of Unused District Facilities by Charter Schools (Chapter 186)

Effective August 10, 2021, RSA 194:61 was added to make unused school district facilities available to chartered public schools.

An "unused facility" means a school building owned by a school district which is not used for academic purposes, extracurricular activities, administrative school functions, or sports and for which the school district has no school board approved written plan for future use. A school board approved plan must include academic purposes, extracurricular activities, administrative functions, or sports to be used by the school within two years of the plan's approval.

On January 1, 2022, and on July 1 every year thereafter, the superintendent of each school district is required to report to the department of education each unused facility owned by the school district. The department is required to establish and maintain a list of unused facilities owned by each school district and make the list available on the department's website.

A school district is required to offer an unused facility to a chartered public school for purchase or lease as follows:

- (a) If a school district's school board extends an offer to purchase or lease an unused facility to a party, other than an approved chartered public school operating in this state, the contract shall include a provision which makes the purchase or lease subject to the right of first refusal by an approved chartered public school operating in this state.
- (b) If the offer to purchase or lease is accepted, the school district selling or leasing the unused facility shall notify the charter school administrator of the department of education who shall notify all approved chartered public schools in this state, as listed on the department of education's website, of the contract to purchase or lease the unused facility. The notice provided to the charter school administrator shall contain clear language that the unused facility is available to any approved chartered public school in this state only, and shall list the offering school district's name and location, the square footage of the unused facility, the contact information of the offering school district's representative, and the expiration date of the right of first refusal which shall be 60 days after the date of the notification to the charter school administrator.

A chartered public school that fails to exercise its right of first refusal forfeits the right as it pertains to the specific unused facility and any future right or interest in the specific unused facility.

If the offering school district has not received an offer to purchase or lease an unused facility from a party, other than an approved chartered public school operating in this state, a chartered public school may initiate, and the school board of the offering school district shall engage in, good faith negotiations for the purchase or lease of the unused facility.

If two or more chartered public schools notify the offering school district indicating an interest in the unused facility to lease or purchase, the offering school district shall make the final selection of the purchaser or lessee.

The criteria used to evaluate parties interested in the purchase or lease of an unused facility shall be public information and shall not be subject to RSA 91-A.

In right of first refusal negotiations with a chartered public school, it shall be the option of the offering school district whether to sell or lease the property under consideration, at fair market value or less, for a term to be agreed upon by the parties. A lease shall include ingress to and egress from the facility, and where a part of a facility is leased, the right to access and use of the common area shared by all tenants and users of the facility. If a chartered public school leases the entire facility, the chartered public school may incur debt to make improvements to the facility, and the school district shall subordinate its interest in the lease to such debt.

The chartered public school shall have 6 months after the date of making a written offer to complete the purchase or lease of the unused facility for a price negotiated with the school district.

During the term of a lease, a chartered public school shall be responsible for direct expenses related to the facility or any part of the facility leased, including utilities, insurance, maintenance, property taxes, and repairs.

If a chartered public school plans to sell an unused facility which it has purchased, it shall first offer the facility to the school district from which it was purchased. The offer shall be governed by the procedures discussed above.

Omnibus Bill on Student Aid, Central Registry, Transportation, and Special Education Costs (Chapter 209)

Effective August 10, 2021, RSA 193-E:3, I (o) was added to require school districts to report the number and percentage of graduating high school students provided in-person school assistance in completing a free application for federal student aid (FAFSA) form to the department of education each year along with the other required information in the statute.

Effective July 1, 2023, RSA 193:26-a is added to require that, beginning with the 2023-2024 school year, each student who is at least 18 years of age or legally emancipated, who is otherwise eligible to graduate from high school, or the parent of such a student who is under the age of 18 years, as a prerequisite to receiving a high school diploma from a public high school, must either:

- (a) File a Free Application for Federal Student Aid with the United States Department of Education; or
- (b) File a waiver on a form created by the state board of education with the student's school district indicating that the parent or guardian or, if applicable, the student, understands what the Free Application for Federal Student Aid is and has chosen not to file an application.

Each school district with a high school is required to provide to each high school student and, if applicable, his or her parent or guardian, any support or assistance necessary to comply with this requirement. A school district must award a high school diploma to a student who is unable to meet the requirement if the student has met all other graduation requirements and the principal attests that the school district has made a good faith effort to assist the student or, if applicable, his or her parent or guardian in filing an application or a waiver.

Effective January 1, 2022, RSA 21-N:9, II(s), RSA 169-C:35, I, and RSA 169-C:35 are amended and RSA 189:13-c for teacher credentialing is added to require the central registry for findings of abuse to be accessed by the department of education for teacher credentialing.

Effective August 10, 2021, RSA 189:6-e was added to allow a school district to contract with a contract carrier of passengers, as defined by RSA 376:2, VII, that is designed to transport 16 or more passengers including the operator, to transport pupils to or from school activities. The motor vehicle used by the contract carrier must bear a valid state inspection sticker, comply with applicable provisions of RSA 376, and be operated by a driver who holds a valid commercial driver's license. "School activities" include, but are not limited to: sporting events, intramural events, events associated with student clubs or organizations, job training programs, field trips, and special education transition services that require travel of at least 150 miles round trip. "School activities" do not include transportation between home and school.

Effective October 9, 2021, RSA 186-C:18, III(a) is amended and RSA 189-D is added to allow the state to designate up to an additional \$250,000 of the funds for each fiscal year for any community of 1,000 or fewer residents to mitigate the impact of special education costs when emergency assistance is necessary to prevent significant financial harm to such district or community.

The statute also allows for the creation of a Special Education Risk Management Association, defined as follows:

No fewer than 5 school districts, by resolution of their governing bodies, may form an RSA 5-B special education cost recovery association under the laws of this state to develop and administer a risk management program for the purpose of recovering unanticipated costs of special education. The members of the association may agree to pool self-insurance reserves, risks, claims, losses, and the expenses of administrative services associated with them. Each district shall be represented by its superintendent, or designee. The members of the association shall elect a governing board from among the members. The RSA 5-B special education cost recovery association governing board shall consist of no fewer than 5 member superintendents, or designees, with diversity in terms of district size and geographic region represented. Each board member shall serve one 3-year term and may only serve one term in each 9 year period. The chairperson of the governing board shall be chosen by the board. Minutes of each meeting shall be kept and made available to the public. There shall be one 2-week period annually, to be decided by the governing board, when new districts shall be allowed to join the association.