

**A PRIMER ON NEW HAMPSHIRE'S
STUDENT RESIDENCE LAWS**
FOR SPECIAL EDUCATION ADMINISTRATORS

Presented By
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I. Confused? You are not alone!

A. “[T]he words ‘residence’ and ‘resides’ are slippery words having many meanings.” *Ebelt v. Ebelt*, 103 N.H. 369, 371 (N.H. Supreme Court, 1961).

B. New Hampshire’s current laws “defining rights and obligations related to public education are [a] ‘statutory thicket,’ requiring ‘more than a fair degree of stamina to navigate.’” *In re Juvenile 2004-789-A*, 153 N.H. 332, 334 (N.H. Supreme Court, 2006), quoting *Manchester School District v. Crisman*, No. Civ. 97-632-M, 2001 WL 311202 at *2 (U.S. Dist. Ct., D.N.H., March 26, 2001).

C. Competing definitions of “resides”:

1. Where one lives or dwells – an objective standard.

This presumably excludes short vacation stays.

2. Where one is “domiciled” – a somewhat subjective standard.

“Domicile” means “that place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.”

Black’s Law Dictionary (Revised Fourth Edition, 1968), p. 572.

3. Derivative – where somebody else (e.g., a parent or legal guardian) “resides.”

But how do you determine where the parent resides? Based on where the parent lives, or where the parent is domiciled?

D. Some policy considerations when selecting an appropriate definition.

1. Speedily identifying where a child will attend school, to avoid interrupting the child’s education.

2. Allowing a child to attend school within commuting distance of where the child lives.
3. Spreading costs fairly among school districts, without penalizing districts that operate the best schools or that have residential facilities within their borders.
4. Preventing fraud (such as when a student moves to a district to attend its schools).
5. Reducing administrative costs (through simple bright line tests that do not require detective work or complicated legal analysis).

II. The historical evolution of New Hampshire’s statutes governing which district is responsible for a student’s education.

A. *Stage 1: a bygone era of simplicity and generosity.*

1. Until 1997, RSA 193:12 provided as follows:

“Nonresidents. No person shall attend school, or send a pupil to the school, in any district in which he is not an inhabitant. . . .”
2. The New Hampshire Supreme Court interpreted that statute as allowing a student to attend public school in the district where he or she *lived*, even if the student lived apart from parents, unless the student moved to the district for the sole purpose of attending its schools.
 - a. *School District No. 1 in Milton v. Bragdon*, 23 N.H. 507, 510, 516 (N.H. Supreme Court, 1851), holding that children who dwelled with their aunt as indentured servants, and whose parents lived elsewhere, were entitled to attend school in the district where the aunt lived.
 - b. *School District No. 1 in Brentwood v. Pollard*, 55 N.H. 503 (N.H. Supreme Court, 1875), holding that children living on the county poor farm were entitled to attend school in the district where the farm was located.
3. RSA 194:27 requires that any school district without a high school pay tuition for a pupil “who with parents or guardian resides in said district” or who is “a resident of said district,” if the student attends high school in another school district.

- a. In *Lisbon v. School District No. 1 v. Landaff Town School District*, 75 N.H. 324 (1909), the New Hampshire Supreme Court held that a child “resides” in a school district under RSA 194:27 if he actually dwells there, regardless of his domicile.
 - b. In *Luoma v. Keene School District*, 106 N.H. 488 (1965), the New Hampshire Supreme Court added that residence under RSA 194:27 must be “bona fide and not merely for the purpose of attending a particular school.” The court also stated that, “while the residence of a child may differ from that of a parent, the residence of the parent having custody generally determines that of the child.”
4. RSA 193:18-b (now RSA 193:28) embodied the principles enunciated in *Brentwood v. Pollard*, *Milton v. Bragdon*, and *Lisbon v. Landaff*. The statute provided as follows.

“Whenever any child is placed or cared for in any home for children, such child, if of school age, shall be entitled to attend the public schools of the district in which said home is located, unless such placement was solely for the purpose of enabling a child residing outside of said district to attend the schools thereof”

The term “home for children” includes orphanages and other institutions “for the care, treatment, or custody of children.” RSA 193:18-a (now RSA 193:27, I).

B. Stage 2: The advent of special education.

1. New Hampshire’s first special education statute, RSA 186-A, imposed responsibility on the school district in which the student “resides.” RSA 186-A:8, I (as amended by N.H. Laws of 1978, Chapter 30, Section 3).
2. RSA 186-A did not define the term resides.
3. In *Juvenile Case No. 1089*, 119 N.H. 64 (1979), the New Hampshire Supreme Court held that a disabled student living in a foster home, who was in the legal custody of the state, resided in the school district where the foster home was located rather than in the district where his parents lived.
 - a. Citing the cases discussed above, the court held that a student resides in the school district where the student *lives or dwells*, unless the student moved to the district solely or primarily to attend its public schools.

- b. The court’s reasoning was not based on the fact that the state, rather than the student’s parents, had legal custody.
 - c. The court cited RSA 193:18-b (now RSA 193:28) as reflecting a legislative preference to impose responsibility on the district in which a foster child lives. While that statute allowed a child to attend local public schools, the court held that RSA 186-A imposed responsibility on the same district for tuition at a private school when a free appropriate public education was not available in the district’s public schools.
4. In 1981, the state legislature repealed RSA 186-A and enacted RSA 186-C. The new statute, like its predecessor, imposes responsibility on the school district in which the student “resides” without defining that term.
- a. RSA 186-C:7, I (imposing responsibility for drafting an IEP on the district in which the student “resides”).
 - b. RSA 186-C:13, I (imposing responsibility for funding special education on the district in which the student “resides”).

C. Stage 3: Responses to Juvenile Case No. 1089.

1. While *Juvenile Case No. 1089* involved a child in a foster home, the decision applied with equal force to school districts in which larger facilities were located, such as group homes, pediatric nursing homes, and state institutions. See *Garrity v. Gallen*, 522 F.Supp. 171, 221 (U.S. Dist. Ct., D.N.H., 1981). This threatened to impose huge and disproportionate financial burdens on the host districts.
2. The legislature offered these districts financial relief by enacting RSA 193:27 and 29 in 1981.
- a. These statutes were designed to build upon *Juvenile Case No. 1089*. They do not state *when* a school district must provide special education for a child in a home for children. They *assume* that a school district in which a home for children is located will provide special education. That assumption is predicated on *Juvenile Case No. 1089*.
 - b. RSA 193:27 and 29 provide that, when a school district in which a home for children or health care facility is located furnishes special education, that district (termed the “receiving district”) is entitled

to reimbursement from a “sending district” for the cost of special education and related services.

- (i) The term “home for children” includes: orphanages; facilities licensed by the N.H. Department of Health and Human Services under RSA 170-E:25, II and III (e.g., foster homes and group homes); and residential schools approved by the N.H. Board of Education under RSA 186:11, XXIX. RSA 193:27, I.
 - (ii) The term “health care facility” includes hospitals, nursing homes, sheltered homes, and other institutions licensed under RSA 151. RSA 193:27, II.
- c. RSA 193:27, IV originally defined “sending district” very simply: as the district in which the student last “resided” outside of a home for children.
- (i) The term “resided” in this context means where the student last lived or dwelled outside of a licensed facility. *In re Gary B.*, 124 N.H. 28 (N.H. Supreme Court, 1983). Accord, *In re Juvenile 2004-A*, 153 N.H. 332 (N.H. Supreme Ct., 2006); *Manchester School District v. Crisman*, 306 F.3d 1, 9 (1st Cir. 2002).
 - (ii) The statutory history of RSA 193:27 and 29 shows that the legislature rejected equating “residence” with “domicile” in this context.
- d. The legislature later amended the RSA 193:27, IV by inserting a more complex definition of “sending district,” one that turns upon who has legal custody. This definition provides as follows:
- (i) When the student’s parents have legal custody, the sending district is where the *parents* “reside.”
 - (ii) When the student’s parents do not have legal custody, the sending district is where the *student* last “resided” outside of a licensed facility.
- e. The legislature enacted similar statutes identifying the responsible school district for educationally disabled children in county correctional facilities and state-operated residential institutions. RSA 186-C:19, 19-a.

- f. The legislative history demonstrates that RSA 193:27 and 29 were intended to:
 - (i) ensure that disabled children living in foster homes and group homes would receive special education from the receiving district in which they lived, pursuant to *Juvenile Case No. 1089*, thus avoiding interruptions in their education pending resolution of ultimate liability; and
 - (ii) provide financial relief to receiving districts, by establishing a simple test for identifying the sending district, a test based on where the student previously *lived* rather than where the student was previously *domiciled*.
3. The New Hampshire Supreme Court unwittingly disrupted this workable legislative scheme by inventing its own cure for the problems created by *Juvenile Case No. 1089*.
 - a. *In re Bryan L.*, 123 N.H. 420 (N.H. Supreme Court, 1983) involved a special education student at the Youth Development Center in Manchester (New Hampshire's state prison for juveniles). The state had "physical custody," but the student's mother retained "legal custody."
 - b. The court held that the student was a resident, for purposes of RSA 186-C:7 and 13, of the district in which his mother resided.
 - c. This amounted to adopting a domicile standard when interpreting the term "resides" in RSA 186-C.
 - d. *Bryan L.* did not even mention *Juvenile Case No. 1089*. The court subsequently reconciled the two cases by observing that *Bryan L.* involved a student whose parent retained legal custody, while *Juvenile Case No. 1089* involved a student in the legal custody of the state. *In re Tammy S.*, 126 N.H. 734, 737-38 (1985).
 - e. *Bryan L.* did not articulate a legal standard for determining where the mother resided.
4. *Bryan L.* and *Juvenile Case No. 1089*, in concert, define the term "resides" in New Hampshire's special education law (RSA 186-C) as follows:
 - a. If the state has legal custody, the student resides where he or she *lives or dwells*.

- b. If a parent retains legal custody, the student resides where the *parent* resides.
5. However, when applying RSA 193:27, IV, which defines the “sending district,” the New Hampshire Supreme Court has continued to interpret the term “resided” as where the student last *lived* outside of a home for children.

This is because the legislative history of RSA 193:27 and 29 compels that result and explicitly rejects a test based on domicile. *In re Juvenile 2004-A*, 153 N.H. 332 (2006); *Gary B.*, 124 N.H. 28 (1983); *Manchester School District v. Crisman*, 306 F.3d 1, 9 (1st Cir. 2002).

D. Stage 4: Tinkering with the definition of residence.

- 1. Around the time of *Bryan L.*, the New Hampshire Supreme Court issued several decisions addressing where a student “resides” in contexts other than public education.
 - a. These decisions agreed with *Bryan L.*
 - b. They held that, “absent circumstances or law requiring a different conclusion, a child’s locality of residence is that of her parents.” *In re Tammy S.*, 126 N.H. 734, 737 (1985). Accord, *In re John M. and David C.*, 122 N.H. 1120 (1982).
 - c. These cases distinguished, but did not overrule, *Juvenile Case No. 1089* and *In re Gary B.*
- 2. In 1981, the legislature amended RSA 21:6, which until then defined the term “inhabitant” as “a resident or person dwelling and having his home in any city, town or place.”
 - a. The definitions in RSA 21 apply to all New Hampshire statutes, “unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute.” RSA 21:1.
 - b. RSA 21:6, as amended in 1981, defines the terms “resident or inhabitant” by reference to one’s domicile.
 - c. RSA 21:6-a, inserted in 1981, likewise defines the terms “residence or residency” by reference to one’s domicile.

- d. The legislative history of the 1981 amendments suggests that these definitions were not intended to apply to minors.

E. Stage 5: 1997 amendments to the school attendance statute.

1. Until 1997, RSA 193:12 allowed a student to attend school in the district where he or she was an “inhabitant.”

Case law generally equated that to where the student lived or dwelled, regardless of his/her domicile or where his/her parents resided, unless the student moved to that district solely or primarily to attend its public schools. (See Section II-A above.)

2. In 1997, the legislature rewrote RSA 193:12 and adopted a domicile standard.

The current version of RSA 193:12 is printed in Appendix A.

3. RSA 193:12 now provides as follows:

- a. A student may not attend a public school without the district’s consent unless he or she is a “legal resident” of the district. RSA 193:12, I.
- b. In the case of a minor, “legal residence is where his or her parents *reside*.” RSA 193:12, II(a) (emphasis added).
- c. The statute adds a litany of tie-breakers for students whose parents are separated or divorced. (RSA 193:12, II(a)(1)-(2), printed in Appendix A.)
- d. If the student is in the “custody of” (lives with) a court-appointed legal guardian, the student is a legal resident of the district in which the guardian resides.¹ RSA 193:12, II(a)(3).

However, “[l]egal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor’s parent or parents.” *Id.*

- e. The key provision is RSA 193:12, III, which says: “For purposes of this title, ‘legal resident’ of a school district means a natural

¹ If the petition asks the court to appoint a relative as guardian, the student may attend school in the district where the guardian resides while the petition is pending. RSA 193:12, II(a)(3).

person who is *domiciled* in the school district.” (Emphasis added.).²

- f. Thus, RSA 193:12 II and III establish the following:
- (i) A minor is entitled to attend school in the district where the relevant parent is domiciled.
 - (ii) An adult student is entitled to attend school in the district where the student is domiciled.
- g. Was the definition of “legal resident” in RSA 193:12, III intended to define the term “resides” in other school laws, such as the special education statute, RSA 186-C?

The legislative history of RSA 193:12 suggests that the answer is “yes.”³

F. Laws that impose responsibility regardless of where the student resides.

1. RSA 193:28 (printed in Appendix B).
- a. This is not a special education statute.
 - b. Until recently, RSA 193:28 allowed a child living in a “home for children” to attend public school in the district where the home for children was located.
 - c. The statute now covers:
 - (i) children living in homes for children (foster homes, group homes, etc.); and
 - (ii) children involved in juvenile court or legal guardianship cases who are placed by DCYF in the home of “a relative or friend.”⁴

² “This title” includes all of New Hampshire’s school laws. However, the term “legal resident” appears only in RSA 193:12. The terms “resident” and “resides” appear throughout the school laws.

³ To make matters even more confusing, in 1998 the legislature enacted the following statute: “For purposes of title XV, ‘legal residence’ means legal residence as defined in RSA 193:12.” RSA 194:1-b. This is nonsense for two reasons. First, RSA 193:12 defines the term “legal resident,” not “legal residence.” Second, the term “legal residence” appears nowhere in New Hampshire’s school laws, other than in RSA 194:1-b, which simply defines the term.

- d. The statute now allows covered children to attend school:
 - (i) in the district where the child is living; or
 - (ii) in the district where the child attended school prior to placement, if the court finds that continuing to attend that school is in the child’s best interest and if suitable transportation can be arranged without imposing additional transportation costs on DCYF or on a school district.
- 2. RSA 193:12, V-a (printed in Appendix A).
 - a. Whenever a parent voluntarily places a child with a relative at the “recommendation or request” of DCYF, the child “shall be permitted to attend the public schools of the school district in which that relative resides.”
 - b. This is similar to, but subtly different from, RSA 193:28.
- 3. RSA 193:12, IV (printed in Appendix A).
 - a. Addresses homeless children and youths.
 - b. Merely defines the terms without conferring any rights.
 - c. A parallel federal statute, the Stewart B. McKinney Homeless Assistance Act, allows homeless children to attend school in the district where they live or in the district they attended before becoming homeless. 42 U.S.C. §§ 11431-11435.
- 4. Statutes governing special education for educationally disabled children ages 3 to 21 at state-operated residential facilities.
 - a. RSA 186-C:19 (printed in Appendix D).
 - (i) For special education children at “state operated facilit[ies] for children and youth with disabilities.”
 - (ii) According to the legislative history, this includes special education students at the Anna Philbrook children’s center (at the State Hospital) and the former Laconia State School.

⁴ DCYF is the Division for Children, Youth and Families, a division of the New Hampshire Department of Health and Human Services.

- (iii) Obligates the responsible school district to pay all costs of special education and related services.
- (iv) If the child is in the legal custody of a parent, the school district in which the parent “resides” is responsible.
- (v) If the child is not in the legal custody of a parent or the parent resides outside the state, the responsible district is the district in which the child “most recently resided other than in a state facility, home for children or health care facility as defined in RSA 193:27.”

This is similar to the definition of “sending district” in RSA 193:27, IV, except that it does not exempt a district in which the child lived based on a DHHS placement (or court placement) with a relative or friend.

b. RSA 186-C:19-a (printed in Appendix E).

- (i) For special education children at the Youth Development Center (now the Sununu Youth Services Center) and county correctional facilities.
- (ii) Limits the responsible school district’s annual liability to an amount equal to the state average elementary per pupil cost.
- (iii) Identifies the responsible school district by using the same formula as described in RSA 186-C:19 (discussed above).
- (iv) Also applies to special education children at the Youth Services Center who have been arraigned under the delinquency statute and are awaiting a dispositional hearing.

5. RSA 126-A:39, I (printed in Appendix C).

- a. Imposes limited liability on school districts for children living in certain state institutions or in court-ordered residential schools, regardless of whether they qualify for special education.
- b. Applies to children ages 3 to 21 in “institutions named in or at the direction of the [New Hampshire] commissioner [of health and human services] in any public or private institution or elsewhere.”
 - (i) This includes the New Hampshire Hospital.

- (ii) It also probably includes placements in residential schools ordered by juvenile courts, since the New Hampshire Department of Health and Human Services funds and supervises such placements.
- c. The statute obligates the school district in which the student's parent or legal guardian "resides" to annually reimburse the State for educational expenses "up to the state average elementary per pupil cost."

III. Pulling together all of the above – a summary of the current laws.

- A. New Hampshire's *special education statute* generally imposes responsibility on the school district in which a student "resides." RSA 186-C:7, I, 186-C:13, I.
 - 1. RSA 186-C does not define the term resides.
 - 2. According to case law interpreting RSA 186-C:
 - a. If a parent retains legal custody, the student resides where that parent resides. *In re Bryan L.*
 - b. If the state has legal custody, the student resides where the student lives or dwells, unless the student moved to that district solely or primarily to attend its schools. *Juvenile Case No. 1089.*
- B. New Hampshire's *school attendance statute* allows a student to attend school in the district where he or she is a "legal resident." RSA 193:12, I.
 - 1. This statute defines "legal residence" as domicile. RSA 193:12, III.
 - 2. If the student is a minor, the student is generally considered to be a legal resident of the district in which his or her parents "reside." RSA 193:12, II.
 - a. If the parents live apart, apply the tie-breaking rules listed in RSA 193:12, II(a) and (b), printed in Appendix A.
 - b. The relevant parent's residence is determined by reference to where the parent is domiciled. See RSA 193:12, III.
 - 3. If the student is an adult, the student's legal residence is determined by reference to where the student is domiciled. RSA 193:12, III.

- C. Regardless of where the student resides, he or she is entitled under certain circumstances to attend public schools in the district where he or she lives. These circumstances include:
1. Students in homes for children. RSA 193:28.
 2. Students placed by DCYF in the home of a relative or friend in conjunction with a delinquency, neglect and abuse, CHINS, or legal guardianship case. RSA 193:28.
 3. Students placed in the home of a relative at the recommendation or request of DCYF. RSA 193:12, V-a.
 4. Homeless children. RSA 193:12, IV; 42 U.S.C. § 11432(g)(3).
- D. When a school district provides services to a special education student living in a home for children or health care facility located within the district, that district becomes a “receiving district” entitled to reimbursement from the “sending district” pursuant to RSA 193:27 and 29.
1. When the state has legal custody, the “sending district” is where the student last resided outside of certain facilities enumerated in RSA 193:27, IV.
 2. When a parent has legal custody, the sending district is where the parent resides. RSA 193:27, IV.
 3. When determining where the student last “resided” outside of the enumerated facilities, one must look at where the student “lived,” not where the student was domiciled. *In re Juvenile 2004-A*, 153 N.H. 332 (2006); *In re Gary B.*, 124 N.H. 28 (1983); *Manchester School District v. Crisman*, 306 F.3d 1, 9 (1st Cir. 2002).
 4. When determining where the parent resides for purposes of identifying a sending district, it is unclear which definition of resides controls (i.e., where the parent lives or where the parent is domiciled).
 5. If a special education student attends the receiving district’s public schools, the sending district must ordinarily reimburse the receiving district for the greater of the following amounts: a) the receiving district’s average annual per pupil cost; or b) the actual cost of special education and related services. RSA 193:29, I(a).

The rationale for this formula is that most students with disabilities receive both regular education and special education and the

combined cost of those services approximates twice the average annual per pupil cost.

6. If the child attends an out-of-district special education placement, the sending district must pay all costs.
7. RSA 193:29 contains special rules when the receiving district pays tuition under an AREA agreement. RSA 193:29, I(b).

While RSA 193:29 ordinarily allows reimbursement only if the student qualifies for special education, this provision referencing AREA agreements allows reimbursement regardless of whether the student receives special education.

- E. If the student is in a state institution or county correctional facility, RSA 186-C:19, 19-a, and 20 identify the responsible school district and specify how much that school district pays.

IV. Traps for the unwary.

- A. It is unclear whether the cost-shifting statutes, RSA 193:27 and 29, apply to students over age 18.
- B. RSA 193:27 and 29 apply only when the student receives services from a receiving district *located in New Hampshire*.
 1. This is because the “sending district” is obligated to reimburse the “receiving district.” The definition of “receiving district” is limited to New Hampshire school districts. RSA 193:27, V, VI.
 2. For example, if a juvenile court places a special education student in a foster home outside of New Hampshire, the sending district need not reimburse the out-of-state district in which the foster home is located.
- C. A sending district probably has no duties other than to reimburse the receiving district.
 1. RSA 193:29 on its face imposes no additional duties on the sending district.
 2. RSA 186-C:7, I states that “the development of an individualized education program . . . shall be the responsibility of the district in which the child resides or of the school district which bears financial responsibility for the child’s education.” This statute does not clarify whether “financial responsibility” means *initial* responsibility (which falls

on the receiving district) or *ultimate* responsibility (which the sending and receiving districts share through the partial reimbursement provisions of RSA 193:29, I(a)).

3. Years ago, the New Hampshire Department of Education concluded that a sending district has no rights or responsibilities other than to reimburse the receiving district. Special Education FY 90 Memo #39 (May 17, 1990). This was based on the New Hampshire Attorney General's reading of the plain language of RSA 193:27 and 29.
4. The N.H. Board of Education's rules implementing the consent decree in *James O. v. Marston* impose responsibilities on the "liable school district." N.H. Code of Admin. Rules, Ed 1117. These rules define "liable school district" as the district "responsible for overseeing the child's educational program." Ed 1117.02(a)(8). However, those rules are circular, because they do not specify which district is responsible for overseeing the child's education program.
5. As a courtesy, the receiving district often allows the sending district to be involved in determining eligibility and selecting a program, because the sending district ultimately pays the bill. In addition, if the child moves from one foster home to another, the receiving district changes and the sending district's involvement ensures continuity.

D. It is unclear whether a receiving district must provide special education if the student's parents retain legal custody and reside in another district.

1. RSA 193:27 and 29 do not address *when* a receiving district must provide special education and related services. They merely allow the receiving district to seek reimbursement *if* it provides such services.
2. RSA 186-C:13 compels a school district to provide special education and related services only if: (i) the student "resides" in the district; or (ii) RSA 193:29 imposes responsibility on the district.
 - a. If the student's parents retain legal custody, the student resides where the parents reside, not in the receiving district where the foster home or group home is located. *In re Bryan L.*; see RSA 193:12, II.
 - b. As noted above, RSA 193:29 imposes no duties on the receiving district. The statute merely allows the receiving district to seek reimbursement when it provides services.
3. RSA 193:28 allows a child living in a home for children to attend school in the district where that home is located. This is not a special education

statute. It is debatable whether this statute compels the receiving district to provide *special* education. This statute certainly does not obligate the receiving district to make an out-of-district placement or to front the costs of such a placement.

4. The New Hampshire Department of Education has advised that the “entitlement” created by RSA 193:28 to attend local schools “involves full services of the district, including special education.” N.H. Dept. of Educ., FY90 Memo #39 (May 17, 1990).
- E. When identifying the sending district as defined in RSA 193:27, IV, at what moment do you take the snapshot?
1. “The date of the original actual placement of a child in a [home for children] is the intended time standard for determining the sending district as defined in RSA 193:27.” *In re Juvenile 2004-A*, 153 N.H. 332 (2006).
 2. One of the two statutory provisions the court relied on in that case, the third sentence of RSA 193:27, IV, has since been repealed.
 3. In my opinion, the sending district is the district in which the student *most recently lived* outside of a home for children, health care facility, state institution, or home of a relative or friend (if DHHS or a court placed the child with the relative or friend).
- F. RSA 193:30 authorizes the New Hampshire Board of Education to adopt rules for administrative hearings to resolve disputes between school districts regarding reimbursement under RSA 193:29. However, the State Board has not adopted such rules.
- G. When a court places a child in a home for children as part of a juvenile justice or legal guardianship case, and parents with legal custody subsequently move out-of-state, check RSA 193:12, II(c) (printed in Appendix A).
- H. When another state places a child in a home for children or health care facility located in New Hampshire, check RSA 193:12, II(b) (printed in Appendix A). Also check the Interstate Compact on the Placement of Children, RSA 170-A, which obligates the sending state to reimburse the receiving state for “support and maintenance.” RSA 170-A-1, Article V, Section (c); RSA 170:2. The term “support and maintenance” arguably includes educational costs incurred by a school district.
- I. RSA 193:12, II(a)(2) includes the following provision inserted in 2008:

“If a child is in a court-ordered residential placement, foster home, or group home pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA

170-C, or RSA 463, residence shall be determined in accordance with RSA 193:27.”

This is nonsense. RSA 193:27 merely defines the terms used in the reimbursement statute, RSA 193:29. Neither RSA 193:27 nor RSA 193:29 provides any guidance for determining where a student currently resides.

V. Forums for resolving inter-district disputes.

- A. In juvenile court, when the court attempts to join the legally liable school district pursuant to RSA 169-B:22, 169-C:20, or 169-D:18.
- B. A State Department of Education “due process hearing” under the special education laws, if the student is a party.
- C. A petition for declaratory judgment in Superior Court.
- D. A petition asking the State Board of Education to issue a declaratory ruling pursuant to RSA 541-A:1, IV and 541-A:16, I(d).
- E. A request that the State Commissioner of Education resolve the dispute pursuant to RSA 193:12, VI (a).
- F. A State Department of Education investigation under 34 C.F.R. §§ 300.151-300.153 and N.H. Bd. of Educ. Rules Ed 1121.

APPENDIX A

Verbatim text of RSA 193:12, regarding student residence

I. Notwithstanding any other provision of law, no person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board except as otherwise provided in this section or in RSA 193:28.

II. For purposes of this section, the legal residence of a pupil shall be as follows:

(a) In the case of a minor, legal residence is where his or her parents reside, except that:

(1) If the parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.

(2) In a divorce decree where parents are awarded joint decision making responsibility or joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides. If a parent is awarded sole or primary residential responsibility or physical custody by a court of competent jurisdiction in this or any other state, legal residence of a minor child is the residence of the parent who has sole or primary residential responsibility or physical custody. If the parent with sole or primary physical custody lives outside the state of New Hampshire, the pupil does not have residence in New Hampshire. If the court order is for equal or approximately equal periods of residential responsibility, the child's legal residence for school attendance purposes shall be as stated in the order. If a child is in a court-ordered residential placement, foster home, or group home pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, residence shall be determined in accordance with RSA 193:27.

(3) If the minor is in the custody of a legal guardian appointed by a New Hampshire court of competent jurisdiction or a court of competent jurisdiction in another state, territory, or country, legal residence is where the guardian resides. If the department of health and human services has been appointed legal guardian, the residence of the minor is where the child is placed by the department or the court. Legal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor's parent or parents. Whenever a petition for guardianship or legal custody is filed in a court of competent jurisdiction on behalf of a relative of a child, other than a parent, the child shall be permitted to attend school in the district in which the relative of the child resides pending a court determination relative to custody or guardianship.

(b) No minor placed in a home for children or health care facility, as defined in RSA 193:27, by another state which charges the state of New Hampshire, a political subdivision of the state of New Hampshire, or a New Hampshire school district, for the regular or special education costs for New Hampshire children placed in that state, shall be deemed a legal resident for purposes of school assignment, unless the sending state agrees to reimburse the receiving district, as defined in RSA 193:27, for regular education and special education costs.

(c) (1) If a parent with legal custody of a child moves from New Hampshire to another state while the child is in a court-ordered residential placement in this state or another state pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, the departments of education and health and human services shall make a written request of the receiving state to assume the programmatic and financial liability of the child's placement in this state or another state until physical custody of the child is returned to a parent or legal guardian. In this subparagraph, "receiving state" shall

mean the state to which the child's parents move.

(2) If the receiving state refuses to accept financial liability, the departments of education and health and human services shall enter into an agreement to provide the child with general and special education and residential services until legal custody of the child is returned to a parent or legal guardian.

III. For the purposes of this title, "legal resident" of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one legal residence at a given time.

IV. The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence, and shall include the following:

(a) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(d) Migratory children, as defined in 20 U.S.C. 6399 who qualify as homeless because such children are living in circumstances as described in subparagraphs (a)-(c).

V. Except as provided in subparagraph II(b), nothing in this section shall limit or abridge the right of any child placed and cared for in any home for children, as defined in RSA 193:27, or of any child placed in the home of a relative of that child by the department of health and human services, or placed in the home of a relative or friend by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, to attend the public schools of the school district in which the home for children or home of the relative or friend in which a child is placed by the department of health and human services or by a court of competent jurisdiction is located, as provided in RSA 193:28.

V-a. Whenever a parent or guardian voluntarily places a child with a relative at the recommendation or request of the department of health and human services, that child shall be permitted to attend the public schools of the school district in which that relative resides provided that:

(a) Upon request of the school district, the department of health and human services shall confirm that the department recommended or requested that the child be placed with the relative to promote the child's well being, and not for the purpose of allowing the child to attend school in the district where the relative resides; and

(b) Upon request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child, the child being allowed to attend school in that district while the relative seeks

guardianship.

V-b. Whenever a dispute arises among one or more school districts, the department of health and human services, or one or more of the previously mentioned parties, as to the residency of a child who is in the legal custody or guardianship of the department of health and human services, or who has been placed pursuant to a court order in a proceeding under RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, the department of health and human services shall request in writing that the superintendents involved resolve the dispute. If the residency dispute remains unresolved 10 days after such request, the department of health and human services shall request that the commissioner of the department of education determine the residence of the child. The child shall be permitted to attend school in the district in which the child has been placed by the court or the department of health and human services pending the resolution of the residency dispute. Liability as to the cost of school attendance provided under this paragraph shall be determined by the commissioner of education.

VI. (a) The commissioner of the department of education, or designee, shall decide residency issues for all pupils, including homeless children and youths, in accordance with this section. If more than one school district is involved in a residency dispute, or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached, the commissioner of the department of education, or designee, shall make a determination within 14 days of notice of the residency dispute and such determination shall be final. In any case, a written explanation shall be provided to the parties of record and a copy of such explanation shall be kept on file by the department of education. No school district shall deny a pupil attendance or implementation of an existing individualized education program.

(b) A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency. If a child does not have a school of origin within this state, the child shall be immediately admitted to the school in which enrollment is sought pending determination of the residency dispute, provided such school is in the school district in which the child temporarily resides. For the purpose of this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled.

(c) Notwithstanding the provisions of RSA 21-N:11, III any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.

VII. Nothing in this section shall require a district to provide transportation for a student beyond the geographical limits of that district.

VIII. Each school district shall adopt an admission and attendance of non-resident students policy.

IX. The commissioner of education may enter into agreements with other states relative to liability for educational costs, including special education costs, of students placed in New Hampshire by those states, or of students placed outside the state of New Hampshire.

X. For the purpose of determining liability for a child placed and cared for in any home for children or health care facility, the provisions of RSA 193:29 shall apply.

APPENDIX B

Verbatim text of RSA 193:27, 193:28 and 193:29, regarding sending districts, receiving districts, and students in homes for children

193:27 Definitions.

As used in this subdivision:

I. "Home for children" means any orphanage; institution for the care, treatment, or custody of children; child care agency as defined by RSA 170-E:25, II and III; or any residential school approved under RSA 186:11, XXIX.

II. "Health care facility" means any hospital, nursing home, sheltered home, or other institution licensed under RSA 151.

III. "State institution" means the New Hampshire hospital, Laconia developmental services, and the youth development center.

IV. "Sending district" means the school district in which a child most recently resided other than in a home for children, the home of a relative or friend in which a child is placed by the department of health and human services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, health care facility, or state institution, if such child is not in the legal custody of a parent or if the parent resides outside the state; if the child is retained in the legal custody of a parent residing within the state, "sending district" means the school district in which the parent resides. For the purposes of this paragraph a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this paragraph.

V. "Receiving district" means the school district in which a home for children or health care facility is located if a child who is placed therein attends a public school in that district or receives educational services from that district.

VI. "School district" means a school district in the state.

193:28 Right of Attendance.

Whenever any child is placed and cared for in any home for children, or is placed by the department of health and human services in the home of a relative or friend of such child pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-C, or RSA 463, such child, if of school age, shall be entitled to attend:

I. The public schools of the school district that the child attended prior to placement, if continuing in the same school district is in the best interest of the child as determined by the court, if the home is within a reasonable distance of the school to be attended, and if suitable transportation can be arranged without imposing additional transportation costs on a school district or the department of health and human services; or

II. The public schools of the school district in which said home is located, unless such placement was solely for the purpose of enabling a child residing outside said district to attend such schools, provided that the school district for a child placed in a group home, as defined in RSA 170-E:25, II(b), within a cooperative school district, shall be the cooperative school district, not the pre-existing district within the cooperative.

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

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

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

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

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

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

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

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

V. The cooperative school district, not the pre-existing district, shall be liable for the cost associated with the education of children placed in a group home, as defined in RSA 170-E:25, II(b), within such cooperative school district provided, however, that the provisions of RSA 193:29, I(a) shall apply to children receiving special education.

APPENDIX C

Verbatim text of RSA 126-A:39, regarding educational expenses for students at the New Hampshire Hospital and other facilities operated or supervised by the N.H. Department of Health and Human Services.

I. Educational expenses of any resident or patient, who is capable of being benefited by instruction and who is between 3 and 21 years of age, as required under statute and incurred in the institutions named in or at the direction of the commissioner in any public or private institution or elsewhere, shall be recovered from the school district in which the patient's or resident's parents or legal guardian reside up to the state average elementary cost per pupil, as determined by the state board of education for the preceding school year. The liability of the school district for such expenses shall precede that of the persons or estates named in RSA 126-A:36 and RSA 126-A:37, which are hereby relieved of liability for such expenses to the extent of the school district's liability.

II. Rates for private providers of special education services shall be set as provided in RSA 186-C:7, III, by the departments of health and human services, education, and administrative services.

APPENDIX D

Verbatim text of RSA 186-C:19, regarding special education students at certain state facilities (such as the New Hampshire Hospital)

I. For a child with a disability in a state facility, the school district responsible for selecting and funding the child's special education or special education and related services shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be the liable school district.

(b) If such child is not in the legal custody of the parent, or if the parent resides outside the state, the school district in which the child most recently resided other than in a state facility, home for children or health care facility as defined in RSA 193:27 shall be the liable school district.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or any other state, shall determine legal custody under this section.

II. For a child with a disability in a state facility, the responsible school district shall be liable for all expenses incurred in administering the law in relation to children with disabilities.

III. Nothing in paragraphs I or II of this section shall diminish the responsibility of the financially liable school district as defined in paragraphs I and II to develop and implement an individualized education program or to fulfill its obligations under other sections of this chapter for a child with a disability in a state facility, regardless of whether such child was initially placed by a school district, the parent or some other agent.

IV. "State facility" as used in this section means any state operated facility for children and youth with disabilities.

APPENDIX E

Verbatim text of RSA 186-C:19-a, regarding special education students at county correctional facilities and the Sununu Youth Services Center (formerly YDC)

I. For a child with a disability at the youth development center or county correctional facilities, or who is placed at the youth services center maintained by the department of health and human services while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13, the school district responsible for the development of an individualized education program and the child's special education expenses shall be as follows:

(a) If such child is in the legal custody of the parent, the school district in which the child's parent resides shall be responsible.

(b) If such child is not in the legal custody of the parent or if the parent resides outside the state, the school district in which the child most recently resided other than in a state institution, home for children or health care facility as defined in RSA 193:27 shall be responsible.

(c) For the purposes of this section a parent shall not have legal custody if legal custody has been awarded to some other person or agency, even if that parent retains residual parental rights. An award of legal custody by a court of competent jurisdiction, in this state or in any other state, shall determine legal custody under this section.

II. The school district liability for educational expenses for a child with a disability in the youth development center or county correctional facilities, or who is placed in the youth services center while awaiting disposition of the court following arraignment pursuant to RSA 169-B:13, shall not exceed the state average elementary cost per pupil, as determined by the state board of education for the preceding school year.

APPENDIX F

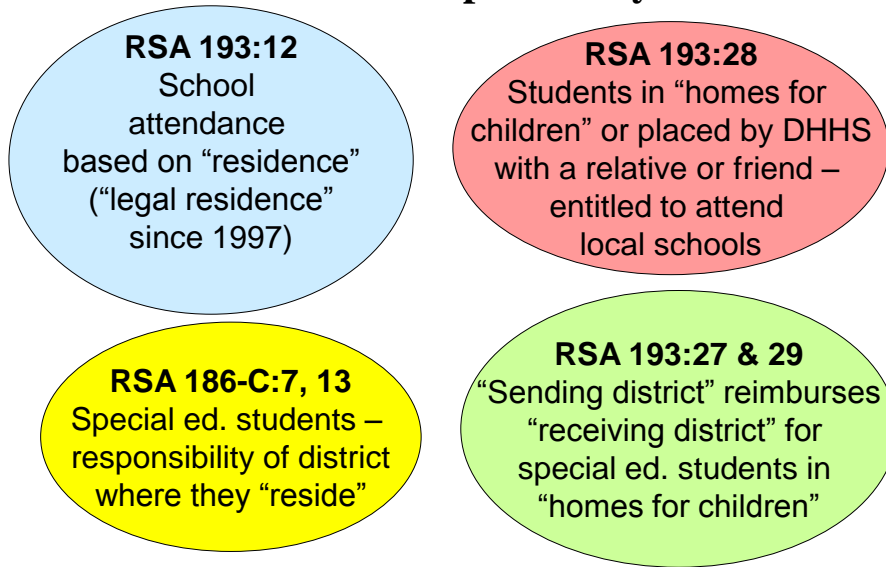
Verbatim text of RSA 186-C:20, regarding special education students at the Youth Services Center

I. Notwithstanding the provisions of any other law to the contrary, the expenses for a child with a disability receiving services at the special education program at the youth services center maintained by the department of health and human services shall be the responsibility of the liable school district so assigning the child. Such a school district shall pay the rate established for the special education program of the center.

II. The special education program of the center shall receive all the moneys paid under this section and is authorized to receive and expend such funds to operate the program. Such expenditures shall be subject to the approval of the legislative fiscal committee

APPENDIX G

Major N.H. statutes governing school district responsibility



Also see RSA 186-C:19 for disabled students in state facilities; RSA 186-C:19-a for disabled students at county correctional facilities and the Sununu Youth Services Center (formerly YDC); RSA 186-C:20 for disabled students at the Youth Services Center; and RSA 126-A:39 for students (disabled and nondisabled) in facilities operated or supervised by the N.H. Dept. of Health and Human Services (such as the New Hampshire Hospital).