

Rep. Noble, Hills. 2
Rep. Peternel, Carr. 6
Rep. Erf, Hills. 28
May 12, 2026
2026-1904h
05/08

Amendment to HB 751-FN

1 Amend the bill by replacing all after section 5 with the following:

2

3 6 Open Enrollment. RSA 194-D is repealed and reenacted to read as follows:

4

CHAPTER 194-D

5

OPEN ENROLLMENT SCHOOLS

6

194-D:1 Definitions. In this chapter:

7

I. "Capacity" means the number of pupil seats available for any grade, program, or technical education program in a district public school without the addition of staff. Capacity shall be determined by the governing body of the school district and need not equal the maximum number of pupils otherwise allowed by law. A determination of no capacity shall not be prohibited.

11

II. "Department" means the department of education.

12

III. "Open enrollment school" means any district public school that provides educational services to pupils outside its district.

14

IV. "Open enrollment pupil" means any pupil who attends a school outside of their resident school district pursuant to the terms of this statute.

16

V. "Parent" means a parent, guardian, or other person or entity having legal custody of a child or, in the case of a child with a disability, a surrogate parent who has been appointed in accordance with state or federal law.

19

VI. "Pupil" means any child who is eligible for attendance in public schools in New Hampshire in kindergarten through grade 12 who is a resident of this state.

21

VII. "Receiving district" means a district receiving pupils from outside of the school district.

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VIII. "Receiving school" means a district public school receiving pupils from another school district under this statute.

24

IX. "Resident district" means the school district in which the pupil resides.

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X. "School board" means the school district school board.

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XI. "State board" means the state board of education.

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XII. "Statewide enrollment cap" means the total number of pupil seats approved by the department of education.

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194-D:2 Program Established; Capacity.

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1 I. For the 2027–2028 school year, the statewide enrollment cap shall be 500. For each
2 subsequent school year, if the total number of open enrollment pupils for the prior year exceeds 90
3 percent of the prior year’s statewide enrollment cap, then the statewide enrollment cap shall be
4 increased once by 25 percent for that year. Pursuant to this paragraph, the department shall adopt
5 procedures to allocate and authorize seats for statewide open enrollment in a manner that ensures
6 equitable geographic distribution and fair access for students across all regions of the state. Any
7 capacity that is utilized by open enrollment pupils prior to October 1, 2026, shall be exempt from the
8 enrollment cap.

9 II. The governing body of each school district shall establish an open enrollment policy to
10 allow pupils to transfer among schools within the district and from another district in the state.

11 III. The governing body of each school district shall determine the capacity of each school in
12 the district, including the capacity of each grade level, career and technical education program, and
13 other academic program with enrollment limitations.

14 IV. The governing body shall develop an open enrollment policy to determine what number
15 of the total capacity of any grade level, career and technical education program, or other academic
16 program with enrollment limitations shall be allotted for open enrollment pupils.

17 V. Each year, districts shall report their open enrollment capacity to the department in
18 accordance with the department’s established process and deadlines. Pursuant to paragraph I and
19 VI of this section, districts shall publish on their website the number of pupil seats approved by the
20 department for open enrollment.

21 VI. The district shall publish on its website the number of available allocated open
22 enrollment seats for each school, grade level, career and technical education program, and other
23 academic programs with enrollment limitations on or before July 1 and December 15 of each year.

24 194-D:3 Parental Choice; Admission.

25 I. A parent may apply to any public school within the state on behalf of a pupil.

26 II. Applications may be made on behalf of eligible pupils to more than one school or program
27 with available capacity.

28 III. Every school shall make information about its curriculum and policies available on its
29 website.

30 IV. There shall be no application fee for pupil admission to any public school.

31 V. Applications for open enrollment may be denied only for the following reasons:

32 (a) The pupil was expelled by the pupil's previous district;

33 (b) The pupil has a documented history of significant disciplinary issues that are not
34 due to an identified disability;

35 (c) The pupil has a documented history of chronic absenteeism. Districts shall consider
36 if chronic absenteeism is due to an identified disability, McKinney Vento status, foster care, or as a
37 result of bullying;

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1 (d) The school, grade level, program, or class has reached the allotted capacity set for
2 open enrollment pupils; or

3 (e) The pupil does not satisfy the prerequisite requirements for the program.

4 VI. No receiving school shall accept or reject an applicant based on pupil needs, special
5 education needs, disability of a pupil, aptitude, or athletic achievement.

6 VII. School boards may adopt application procedures and deadlines for applications for
7 enrollment, provided that:

8 (a) Applications for enrollment shall be open at least twice per academic year.

9 (b) If the number of applicants for enrollment exceeds capacity, enrollment shall be
10 determined by a random selection lottery that provides equal opportunity for admissions.

11 (c) The lottery shall be conducted in a fair, transparent, and non-discriminatory
12 manner.

13 (d) Nothing in this section shall prohibit a school board from adopting a policy that
14 establishes preferences in the lottery for:

15 (1) Siblings of currently enrolled pupils;

16 (2) Children of school employees; and/or

17 (3) A student residing in New Hampshire with one or more parent or guardian on
18 active military duty, regardless of the physical location or place of residence of the active-duty parent
19 or guardian.

20 (e) Any preferences established by a district's open enrollment policy shall be published
21 with the application, prior to the start of the application period.

22 VIII. An open enrollment pupil shall maintain continuous enrollment in the receiving school
23 without requirement of reapplication, except in cases of expulsion.

24 IX. School board policies shall provide an admission preference prioritizing open enrollment
25 pupils matriculating with the same cohort.

26 X. For pupils participating in open enrollment, neither the resident district nor the
27 receiving district shall be required to provide transportation to a school outside the pupil's resident
28 district, except as required by a pupil's individualized education program (IEP) or Section 504 plan,
29 in which case the resident district shall provide such transportation.

30 XI. A parent may provide transportation to a bus stop on an existing route if that bus has
31 available seats as determined by the receiving school district. The receiving district shall provide
32 the parents with information regarding transportation options.

33 XII. A pupil may withdraw from an open enrollment school at any time and enroll in a
34 public school where the pupil resides, except that no pupil shall change schools more than once per
35 academic year. The school board of the pupil's resident district may waive this limitation after a
36 hearing.

1 XIII. Each school district in the state shall report annually to the department the number of
2 applications, acceptances, and denials, and the reason for each denial. The department shall
3 publish the data annually on its website and provide reports to the senate and house education
4 committees and the state board of education.

5 194-D:4 Funding.

6 I.(a) There shall be no tuition charge for any pupil attending an open enrollment school.

7 (b) For each open enrollment pupil, the department of education shall pay aid amounts
8 pursuant to RSA 198:40-a, II(a)-(c) plus the additional grant pursuant to RSA 194-B:11, I(b)(1)(A) to
9 all open enrollment public schools according to the average daily membership in attendance
10 pursuant to RSA 198:38, I(a). The department shall adjust the rates specified in this subparagraph
11 in accordance with RSA 198:40-d.

12 (c) The state shall pay amounts required pursuant to RSA 198:40-a, II(d), additional
13 differentiated aid for each pupil who is receiving special education services, directly to the resident
14 district.

15 II.(a) Districts with an existing tuition agreement shall follow the terms of any existing and
16 active tuition agreement as applicable between both parties. Notwithstanding any provision herein,
17 nothing in this statute shall relieve a district from providing at least one education option that does
18 not require additional tuition payment from the parent. A district not operating a school, serving
19 any grade from kindergarten through grade 12, shall maintain an active tuition agreement that has
20 been approved by the school board to provide pupils with the opportunity to acquire an adequate
21 education as defined in RSA 193-E:2.

22 (b) Districts receiving an open enrollment pupil from a resident district that already has
23 a tuition agreement with the receiving open enrollment school shall not receive an open enrollment
24 aid amount. The resident district shall follow their tuition agreement and shall receive the
25 adequacy aid amount as calculated and distributed pursuant to RSA 198:42, III. Open enrollment
26 public schools shall report to the department of education the number of open enrollment pupils
27 attending each school.

28 (c) Any district where the number of pupils residing in the district and calculated
29 towards the open enrollment grant pursuant to paragraph I exceed the number of resident district
30 pupils calculated towards the adequacy calculation pursuant to RSA 198:38, I-a shall have their
31 existing tuition agreement presented by the district to the state board of education. The state board
32 of education may require the district to enter into a new tuition agreement.

33 III. For a pupil attending an open enrollment school in another school district, the
34 department of education shall calculate and distribute open enrollment aid payments during the
35 year in which the pupil is educated as set forth in this paragraph. The first payment shall be 30
36 percent of the per pupil open enrollment aid amount, excluding differential aid components pursuant
37 to RSA 198:40-a, II(b)-(d), multiplied by the number of eligible pupils enrolled on October 1st. To

1 calculate the final payment, the department of education shall multiply the per-pupil amount,
2 including differential aid components pursuant to RSA 198:40-a, II(b)-(d), by the average daily
3 membership in attendance for the full school year and subtract the total amount of payments made.

4 IV. The source of funds for payments under this section shall be moneys from the education
5 trust fund established in RSA 198:39. The governor is authorized to draw a warrant from the
6 education trust fund to satisfy the state's obligation under this section. Such warrant for payment
7 shall be issued regardless of the balance of funds available in the education trust fund. If the
8 balance in the education trust fund, after the issuance of any such warrant, is less than zero, the
9 state comptroller shall transfer sufficient funds from the general fund to eliminate such deficit.

10 V. In accordance with current department of education standards, the funding and
11 educational decision-making process for children with disabilities transferring to a school shall be
12 the responsibility of the resident school district and shall retain all current options available to the
13 parent and to the school district.

14 VI. The commissioner of the department of education shall apply for all federal funding
15 available to open enrollment schools under any federal source of funds. The commissioner shall
16 expend any such funds received in a manner acceptable to the funding source.

17 VII. A resident district may provide funds, services, transportation, equipment, materials,
18 or personnel to a school, in addition to the amounts specified in this section in accordance with the
19 policies of the resident school district.

20 194-D:5 District of Liability for Special Education Services. The resident district shall remain
21 responsible for educational decision making and the provision of special education and related
22 services under RSA 186-C, consistent with the pupil's IEP, for pupils with disabilities who transfer
23 to a school outside the resident district. All state aid for special education shall be sent to the pupil's
24 resident district.

25 194-D:6 State Board; Duties.

26 I. The state board shall adopt rules, pursuant to RSA 541-A, consistent with the provisions
27 of this chapter relative to the administration of enrollment in public schools across the state.

28 II. The state board shall convene one or more working committees to study and make
29 recommendations regarding the implementation and effectiveness of open enrollment policies. The
30 recommendations shall be provided to the legislative oversight committee in RSA 193-C:8-a.

31 7 New Subparagraph; Education Trust Fund; Open Enrollment Aid. Amend RSA 198:39, I by
32 inserting after subparagraph (q) the following new subparagraph:

33 (r) To fund open enrollment aid pursuant to RSA 194-D.

34 8 New Subparagraph; Procedure for Adoption and Rescission; Limitations. Amend RSA 194-
35 D:3, I(c) by inserting after subparagraph (2) the following new subparagraph:

36 (3) Any pupil enrolled in an open enrollment school prior to the resident district's
37 adoption of the provisions of RSA 194-D shall be exempt from imposed limitations on resident pupils

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1 attending an open enrollment school outside of the school district and shall continue to be eligible for
2 tuition for the period necessary to complete the highest grade level offered by the school.

3 9 New Section; Open Enrollment Reporting Requirement. Amend RSA 194-D by inserting after
4 section 7 the following new section:

5 194-D:8 Reporting. On or before October 1, 2026, each school district shall report to the
6 department of education the number of open enrollment pupils in attendance by school, grade level,
7 career and technical education program, or other academic programs.

8 10 Repeal. The following are repealed:

9 I. RSA 194-D:2, I, relative to open enrollment eligibility and the statewide enrollment cap.

10 II. RSA 194-D:2, V, relative to reporting of open enrollment capacity in conjunction with the
11 open enrollment cap.

12 11 Contingency. Section 10 of this act shall take effect on the date the commissioner of the
13 department of education certifies to the secretary of state and the director of the office of legislative
14 services that the statewide enrollment cap has not increased for 2 consecutive school years.

15 12 Effective Date.

16 I. Sections 8 and 9 of this act shall take effect July 1, 2026.

17 II. Section 10 of this act shall take effect as provided in section 11 of this act.

18 III. The remainder of this act shall take effect July 1, 2027.

UNAPPROVED

2026-1904h

AMENDED ANALYSIS

This bill:

I. Establishes a committee to study licensure of outpatient substance use disorder treatment facilities.

II. Allows parents to send their children to public schools outside of their resident district; requires public schools to establish open enrollment criteria and determine availability based on capacity; and establishes a funding formula for open enrollment payments from the education trust fund to open enrollment schools. The bill includes an initial statewide enrollment cap on the number of open enrollment pupils.

UNAPPROVED