Appendix E

Summary of Commission Members’ Input Used In Developing Findings And Recommendations
The charge of the commission is detailed in RSA 186-C:30, II: The commission shall study issues relating to students receiving special education services while attending a chartered public school, including but not limited to the following:

(a) The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided;

(b) The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings;

(c) The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education;

(d) The nature of the legal relationship between the local education agency and the chartered public school; and

(e) Any other issues which the commission deems relevant to the objective of the study.

The chart on the following pages began with input from Commission members who responded to a questionnaire with sections for each of the issues in RSA 186-C:30, II(a) – (e). Initially, input was received from 10 Commission members (from about half of the membership categories) including representation from the General Court, NH DOE, organizations representing Special Education/LEAs and School Boards, Charter School administrators, Parents, PIC, DRC, and NH DHHS. The document was then shared with all Commission members, and further input from all of the members of the Commission was added and is included in this consolidated input chart.

The input for each section is organized into the following categories regarding the provision of special education services to children with disabilities who are attending chartered public schools:

- Statutory requirements,
- What is currently working well,
- Challenges,
- Solutions or strategies, and
- Additional input.
RSA 186-C:30, II(a) The provision of special education services to students attending chartered public schools, including the nature and amount of such services, how such services should be provided, and where such services should be provided.

Required by Statute (The complete statutes/regulations or relevant excerpts are included in Appendix C):

The RSA's below summarize current statutes that are applicable to the provision of special education services as well as communication between district schools and public chartered schools. They outline requirements that everyone must follow.

1. **Chartered Public School Requirements** (RSA 194-B:8, I) states “A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C. A chartered public school shall provide due process in accordance with state and federal laws and rules.”

2. **Chartered Public Schools; Funding and Decision-Making** [RSA 194-B:11, III (a)] states, “In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.”

3. **Chartered Public Schools; Public Selection; Enrollment; Separation** [RSA 194-B:11, I (e)] states, “Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”

4. **Chartered Public Schools; Public Selection; Enrollment; Separation** [RSA 194-B:11, I (b)], states, “When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”

5. **Chartered Public Schools; Public Selection; Enrollment; Separation** [RSA 194-B:11, III (b) (1)-(6)], states, “The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

   1) The resident LEA may send staff to the chartered public school; or
   2) The resident LEA may contract with a service provider to provide the services at the chartered public school; or
   3) The resident LEA may provide the services at the resident LEA school; or
   4) The resident LEA may provide the services at the service provider's location; or
   5) The resident LEA may contract with a chartered public school to provide the services; and
   6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident LEA shall provide transportation for the child.”
6. In accordance with RSA194-B:3 II (a), each charter school’s application and NHDOE approved charter must provide guidelines under “…matters pertaining to any required special education programs or services including method of compliance with federal and state laws pertaining to children with disabilities.”

7. Special Education; Policy and Purpose (RSA 186-C: 15, I) states, “The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child’s individual education program team determines that such services are necessary to provide the child with a free appropriate public education.”

8. Provision of Staff and Staff Qualifications [Ed 306.15 (b)(4)(e)] requires certification of each professional staff member working for a school district. “Certification Standards for Educational Personnel by Subject Area” (Ed 500 and Ed 600) include requirements for certification and employment of the general special educator (Ed 507.39).

9. Occupations and Professions (Title XXX) and the NH Office of Licensed Allied Health Professionals defines licensing requirements of each professional (i.e. Speech Language Pathologists, Occupational Therapists) who works for New Hampshire schools.

10. Chartered Public Schools, Employees (194-B:14, IV) states, “The teaching staff of a chartered public school shall consist of a minimum of 50 percent of teachers either New Hampshire certified or having at least 3 years of teaching experience.

Provision of Special Education Services – What is Working Well:
The HB 126 Commission found that in regards to the provision of services, there are a number of processes that are working well and should continue to be maintained.

1. There is flexibility allowed for both the charter school and the school district to meet the services identified in the IEP as outlined under RSA 194-B:11, III (b) (1)-(6) (see #5 on previous page). Many school districts and charter schools work collaboratively to provide special education services at the best time for the student using available resources.

2. As outlined in RSA 194-B:111 (b), many comply with the expectations that “School districts and charter schools shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”

3. Certified special education teachers provide the special education services. The school district may provide the services or reimburse the charter school for services.

4. With collaboration and teamwork among the school district, charter school and special education service providers, the special education program is most effective for the student.

5. Parents of students whose charter school has no high school agree that school district involvement is important for students who may return to their school district.

Provision of Special Education Services – Challenges:
The HB 126 Commission found a number of challenges in regards to the provision of services. The challenges listed below affect District Schools, Chartered Public Schools, and/or Parents and Students.

1. The former NHDOE position was not filled which took away support for charter schools.

2. Hiring highly qualified and trained special education staff for students attending charter schools is a challenge, especially if a student transfers to the charter school in the late summer or early fall. Often
multiple school districts must work together with the charter school to hire highly qualified and specially trained special education staff.

3. Contracted special education services can be more costly to the school district, difficult to budget for, and difficult to secure. Districts are unable to realize the economies of scale in some cases because services are provided at a premium and in more restrictive 1:1 or smaller group settings.

4. Related services (i.e. speech-language pathologist or occupational therapist services) are difficult to secure due to a critical shortage across the state.

5. School districts are held accountable for the implementation of the IEP when districts have no authority to ensure charter school staff members follow the IEP.

6. Chartered Public Schools have no authority if districts are not providing all the hours of service in the IEP.

7. School districts and charter schools may not always schedule a meeting of the individualized education program (IEP) team, inviting a representative of the charter school is required as outlined in RSA 194-B:11 I (b) to address how the school district will implement the IEP at the charter school.

8. While the school district and charter school have options for providing special education services, there can be challenges when the student must return to the school district to receive these services as allowed under RSA 194-B:11, III (b) (1)-(6).

9. Transporting the student to the District School may decrease the hours of the school day to below the minimum required or extend the school day for the student.

10. Changing the law won’t help when school districts and charter schools face disagreement about special education service delivery; resources are needed to resolve these differences.

11. Communication and collaboration is key to strong special education programs provided by school districts at charter schools, but it is not possible to regulate collaboration.

12. Charter school teachers may have little experience or background in special education. School districts may need to provide special education training to charter school staff to ensure understanding of the special education process and the educational needs of students with disabilities.

13. The membership of the State Advisory Committee on the Education of Children with Disabilities (RSA 186-C:3-b, II) includes “a representative of a chartered public school, appointed by the governor”, but that slot has often been unfilled.

14. While RSA 194-B:11, III(b) requires the LEA to invite a representative of the chartered public school to the IEP team meeting, it does not state that the charter school representative then becomes a member of the child’s IEP team.

Provision of Special Education Services – Solutions or Strategies

1. Establish a permanent and dedicated state-funded position of a full-time chartered public school officer at the NH DOE whose duties would include: 1) provide oversight of charter schools’ academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.

Note: SB 483, An Act establishing the position of chartered public school program officer in the department of education was signed into law during the Commission’s tenure, with an effective date of 7/1/17. One of the chartered public school program officer’s responsibilities is to “work closely with the resident school districts and chartered public schools to assure appropriate support for students with disabilities”.

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2. Clarify through procedures how special education services at chartered public schools will be monitored to ensure both the charter schools and the school district provide special education services as outlined in the student’s Individualized Education Program (IEP).

3. Provide specific information in the NH DOE’s model Procedural Safeguards handbook about the rights of children with disabilities who attend a chartered public school, and about the available options for resolving disputes. Examples could be given in an accompanying memo from the NH DOE.

4. Include information for school districts and chartered public schools in the NH DOE’s Special Education Policy and Procedures Manual.

5. DOE develop model forms and checklists to assist LEAs and chartered public schools in providing FAPE to students with disabilities attending chartered public schools in accordance with NH statutes and utilizing best practices.

6. Clarify the process for dispute resolution and of non-compliance issues raised by the parent, the charter school, or the school district, and include in DOE guidance, memos, etc.

7. Include in memos, guidance documents and the NH DOE’s Special Education Policy and Procedures Manual, a clear prohibition on a chartered public school denying the enrollment of a child on the basis of the child’s disability, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents “opt their child out” of special education while the child is attending a chartered public school, or that unilaterally reduce a child’s special education and/or related services once the child enrolls in a chartered public school. The documents should include the steps that the NH DOE will take in response to any such actions.

8. Include procedures in the “NH Rules for the Education of Children with Disabilities” for resolving disputes between parents and the LEA regarding how and where special education services are provided.

9. NH DOE, with input from charter schools and LEAs, identify special education resources and personnel for technical assistance and professional development for charter schools to provide these supports every year.

10. Identify school districts and charter schools who do work collaboratively to find solutions for special education services and related services, and disseminate the best practices they use to other school districts and charter schools. Support opportunities where representatives from the LEAs and charter schools who have had positive experiences and who use best practices can mentor other LEAs and charter schools.

11. Identify mechanisms for identifying and disseminating best practices that help charter schools and school districts meet student needs while minimizing the impact on staffing, schedules, budgets, and coordination of services, including through the use of data.

12. Clarify the role of the invited representative of the chartered public school (RSA 194-B:11, III(b)) on the IEP team. While RSA 194-B:11, III(b) requires the LEA to invite a representative of the chartered public school to the IEP team meeting, it does not state that the charter school representative then becomes a member of the child’s IEP team. Several parents and representatives of charter schools expressed that in order for the charter school representative to be valued as a true team member, they need to be listed as a member of the IEP team, rather than as an invited “guest”. This may require a revision in the statute and/or in the NH Rules for the Education of Children with Disabilities.

13. Provide specific requirements about how the decision is reached about where special education and/or related services are provided (i.e. LEA’s decision alone or decision by the IEP team), and what options are available if there is a disagreement.

14. Consider organizing the list of options for providing special education and related services in charter schools outlined in statute as a true continuum, with one option identified as preferred (e.g., the option that is least disruptive to the student’s school day).
**Additional Input** — The HB 126 Commission heard the following input that was pertinent but did not fall under any major heading above:

1. The NHDOE Bureau of Special Education has not received any special education complaints regarding students attending a charter school who are not receiving services in the IEP.

2. School district and charter school administrators and staff may have differing opinions on the NH special education process and the effectiveness of various special education service delivery models.

3. There is limited data on the special education services provided for students attending charter schools.

4. Funding issues can distract the school district and the charter school when considering the most fiscally responsible and student centered model for providing special education services.

5. School schedules can complicate scheduling special education services.
RSA 186-C:30, II(b) The nature of communications between the chartered public school and the local education agency, including the involvement of a chartered public school in the individualized education plan meetings.

Communication – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):

1. Chartered Public Schools; Funding and Decision-Making [RSA 194-B:11, III(a)] states, “In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.”

2. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11 I (b)], states, “When a child is enrolled by a parent in a charted public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP.”

3. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11, III (b) (1)-(6)], states, “The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:
   (1) The resident LEA may send staff to the chartered public school; or
   (2) The resident LEA may contract with a service provider to provide the services at the chartered public school; or
   (3) The resident LEA may provide the services at the resident LEA school; or
   (4) The resident LEA may provide the services at the service provider's location; or
   (5) The resident LEA may contract with a chartered public school to provide the services; and
   (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident LEA shall provide transportation for the child.”

4. Chartered Public Schools; Public Selection; Enrollment; Separation [RSA 194-B:11 I (c)] states, “The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.”

5. In accordance with [RSA194-B:3 II (n)], each charter school's application and NHDOE approved charter must provide guidelines under “…matters pertaining to any required special education programs or services including method of compliance with federal and state laws pertaining to children with disabilities.”

Communication - What is Working Well:
The HB 126 Study Commission considered what is working well in regards to communication between District Schools and Public Chartered Schools in the area of special education. We identified the following areas:

1. RSA 194-B:11, III (b) (1)-(6) allows flexibility for school districts to provide the special education services outlined in the IEP. Many school districts and charter schools work collaboratively to find solutions to providing special education services at the best time for the students.
2. Many school districts and charter schools follow the expectations of RSA 194-B:11, I (b) whereby “School districts and charter schools shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child’s IEP.” As part of this process, school district personnel and charter school personnel contribute valuable information about students’ needs. Representatives from the charter schools typically are invited to these meetings and participate. Charter school representatives provide input about how special education services could be delivered in the chartered public school.

3. Certified special education teachers provide the special education services. The school district may provide the services or reimburse the charter school for services.

4. In the spirit of cooperation and good communication, when the special education teacher works closely with the charter school and the school district, student progress is carefully monitored and reported to parents, charter school staff, and school district staff.

5. Parents of students whose charter school has no high school agree that school district involvement is important for students who may return to their school district.

6. Many charter schools provide the majority of services with reimbursement by the school districts. To be successful, this model requires planning/meeting time and timely reimbursement.

Communication – Challenges:

The HB 126 Study Commission found a number of challenges in regards to the communication between District Schools, Chartered Public Schools, and Families of Students. The challenges listed below affect all three entities.

1. The process of hiring or contracting for highly qualified and certified or licensed special education services is often time-consuming. Having special education staff available the first day of school is sometimes difficult, especially if school district is not aware of the special education student’s transfer to the charter school and/or if the charter schools is not be aware that the student has an IEP.

2. School districts prepare budgets well in advance of the start of the new school year. Unanticipated costs for special education services at the charter school along with the requirement for oversight of special education programs at a charter school can create tension between the school district and the charter school.

3. Funding issues can distract the school district and the charter school when considering the most fiscally responsible and student centered model for providing special education services.

4. There will always be potential for disagreements between the school district and the charter school that may cause contentious relationships. Perhaps NH DOE resources could assist those few to work out the issues.

5. While there is no evidence of denial or reduction of special education services for students attending charter schools, perhaps the NH DOE should monitor to ensure compliance with the RSAs governing school district and charter school requirements under special education.

6. School districts are required to invite charter school staff to IEP meetings. This may not happen consistently. Charter school staff may not be able to attend due to scheduling conflicts. This impacts the charter school’s role and level of participation in the special education meeting.

7. Defining each person’s role and responsibility would be helpful to both the charter school and the school district (for example, what are the expectations for each member of the special education team during IEP meetings; who is responsible for collecting progress monitoring data; who writes the special education progress reports, etc.)
8. School districts could identify training resources and/or identify professional development tools for use by charter school staff to understand the special education process and understand the unique nature of a student’s learning differences.

**Communication – Solutions or Strategies:**

The HB 126 Commission offers the following recommendations as solutions or strategies to improve the challenges outlined above. Some would require a change of practice, some could be led by the NH Department of Education, and some would require legislation.

1. Establish a permanent and state-funded position of a chartered public school officer at the NH DOE to serve in multiple capacities: 1) provide oversight of charter schools’ academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.

2. Provide parent-friendly documents and other information on the NH DOE website that defines special education services at charter schools. Include contact information for parents who may have questions or concerns. Define the resources available to special education teams that may benefit from IEP Team facilitation and other third-party supports or filing of a due process complaint.

3. Provide guidelines for each member of the special education team, defining the roles and responsibility of the charter school’s classroom teacher or representative. Provide flexibility for ways in which the charter school may participate in the IEP meeting (by conference call, meeting at the charter school rather than at the district as two examples).

4. Review transition procedures for students transferring from a school district to a charter school, including to ensure the timely transfer of records. Monitor these students to ensure services continue as outlined in the IEP unless there is evidence to change services.

5. Investigate whether the student management systems within the NH DOE could help monitor student transfers without violating FERPA.

6. Define a mechanism for school districts and charter schools to share “best practices” that enable parties to work collaboratively on behalf of students with learning difficulties.

7. Provide joint/collaborative training opportunities (perhaps hosted by the NH DOE) for LEAs, chartered public schools, and parents of children with disabilities enrolled in chartered public schools, and/or provide “scholarships” for LEA representatives to attend NH’s charter school conference and for charter school representatives to attend conferences for LEAs to ensure that there is a shared understanding of information and to provide networking opportunities.

**Communication – Additional Input:**

1. A NH DOE stakeholders group could provide feedback and input on special education services at NH Charter Schools.

2. There may be a difference of opinion on how and where special education services should be provided by the school district (i.e. returning to the district for services rather than remain at the charter school)

3. School districts are held accountable for the implementation of the IEP when districts have no authority to ensure charter school staff members follow the IEP.
4. Contracted special education services provided by highly qualified and specially trained staff can be costly to the school district and difficult to budget for and even more difficult to secure. Districts are unable to realize the economies of scale in some cases because services are provided at a premium and in more restrictive 1:1 or smaller group settings.

5. Related services (i.e. speech-language pathologist or occupational therapist services) are difficult to secure due to a critical shortage.

6. School districts must provide special education training to charter school staff to ensure understanding of the special education process and the educational needs of students with disabilities.

7. Regularly scheduled meetings between charter school representatives and LEA representatives can allow them to proactively identify and respond to emerging issues or existing challenges.
RSA 186-C:30, II(c) The funding for children in need of special education services who are attending a chartered public school and whether such funding is sufficient to ensure a free and appropriate public education:

Financial Issues – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):

1. RSA 194-B:11 is the statute covering funding for and related to chartered public schools, with RSA 194-B:11, III addressing funding responsibilities for the provision of special education and related services for children attending chartered public schools.

2. RSA 194-B:11, III. (a) In accordance with current department of education standards, the funding and educational decision-making process for children with disabilities attending a chartered public school shall be the responsibility of the resident district and shall retain all current options available to the parent and to the school district.

3. RSA 194-B:11, III (b) (1)-(6) allows flexibility for school districts to provide the special education and related services required by a child's IEP.

4. RSA 194-B:11, III. (c) Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services.

5. §300.209 Treatment of charter schools and their students –
   (d) Public charter schools that are not an LEA or a school that is part of an LEA.
      (1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the SEA is responsible for ensuring that the requirements of this part are met.
      (2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

While, in accordance with 34 CFR 300.209(d), the SEA may assign initial responsibility to another entity (the resident LEA, in NH), the ultimate responsibility remains with the SEA.

6. Part I, Article 28-A of the NH Constitution, states, “The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.”
**What we know: Special Education Funding**

1. Resources that district schools can access to pay for special education costs include Federal IDEA funds, local funds from property tax dollars, local funds paid to the city/town from Catastrophic Aid, and Differentiated Aid. IDEA funds flow through the state to School Districts. Differentiated Aid in the amount of $1,915.86 (2016-2017) is paid from the state to School Districts for each student receiving special education services.

   Sources of funds for FY 2015 were as follows:

   1) Allocation for Special Education ADM-R in Adequate Education Aid: $52,326,336.74
   2) Catastrophic Aid Proration 74.427999% (75% of 80% of eligible costs): $21,537,307.66
   3) IDEA Allocations $41,206,686.13
   4) Local Property Taxes (Total State Expenditures for Special Programs minus Total Funding from 1-3 above: $533,232,787 - $115,070,330.53 = $418,162,456.47

   *See pie chart that illustrates the allocations above.

The table below represents specific sources of funding for special education, the amount allotted, purpose, and method of distribution of dollars.
2. The State of NH has no mechanism to determine the average per pupil cost for special education. An approximation for students in NH can be estimated by dividing NH expenditures for Special Programs by the number of K-12 students with IEPs. For FY 2015, it would be approximately $19,363. Special education costs per pupil vary widely based on the services the student needs as well as the range of typical special education costs for individual districts.

3. No expenditure made by a District School for special education costs at a Charter School has met the threshold for a School District to receive Catastrophic Aid.

**Other Funds for SPED through the DOE**

<table>
<thead>
<tr>
<th>State-funded Differentiated Aid for Special Education</th>
<th>$1,915.86 per pupil for FY 17</th>
<th>School district receives these funds for each public school student who receives special education services.</th>
</tr>
</thead>
</table>
| **State CAT aid**
RSA196-C:18
For DOE approved SPED programs | Formula-based once threshold is met by school district ($50,570.59 for FY 15)
CAT aid applies to SPED costs that exceed 3½ times the average cost per pupil for an individual student. | School District is reimbursed 75% of 80% of eligible cost
No School District expenditure for special education services for a charter school student has met the threshold as of this writing. |
| **IDEA**
Federal law | Federal funding to SPED programs in districts.
(41 million for FY 15)
Not child specific. For example: equipment, personnel, modifications to a classroom, etc. | Formula based on SPED enrollment, poverty, and hold harmless. Used to ensure students with disabilities are provided FAPE tailored to needs. |
| **402 Court-Ordered Placement** | Formula based. District responsible for 3X the state average cost per pupil and development of IEP. | Court-ordered residential placement. Once threshold is met, the State picks up 100% of remaining costs. |

**Financial Issues – What is Working Well / What Should We Maintain:**

1. Many School Districts and Charter Schools work collaboratively to find solutions to providing special education services while considering the fiscal impact and the ability to hire certified and highly qualified special education teachers.

2. In most instances, Charter Schools and District Schools state the arrangement works.

3. Because School Districts are responsible for providing a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE), it ensures that students with disabilities are able to access local education dollars for provision of special education and related services.

4. Two specific instances were identified when cost-savings may be realized as a result of a child with a disability enrolling in a chartered public school: 1) if the type of level of services the child needs is reduced due to the child’s comfort level or environmental factors (It was noted that this may occur for children with anxiety.); or 2) if the resident LEA has a contractual arrangement with another LEA or academy for which they pay tuition for resident children to attend. (Tuition would not be paid for a child who attends a charter school.)
Financial Issues – What are challenges that need to be addressed for LEAs, Charter Schools, and/or parents/students?

1. School Districts and Charter Schools cannot predict from year to year how many students with special education needs will be attending Charter Schools.

2. In some instances, prior to the transfer of a student to a Charter School, School Districts are reducing services or discharging students from an IEP, possibly as a means to control the expense of providing special education services. There need to be assurances that services are not compromised to save costs.

3. Distance from the School District to the Charter School sometimes makes it difficult for the School District to provide services with its own staff. Contracting with service providers can increase the cost to School Districts of providing the service.

4. For students with complex needs, School Districts can incur a significant expense trying to recreate a specialized program in a Charter School. To date, District Schools and Charter Schools have worked out these issues on a case-by-case basis.

5. Some committee members view School Districts funding special education in Charter Schools as an unfunded mandate. Those members view the responsibility of funding state-authorized Charter Schools as being the State of New Hampshire’s responsibility.

6. LEAs are not able to seek reimbursement from certain existing funding sources (e.g. Medicaid to Schools) for travel costs related to sending a special educator or related service provider to a chartered public school to serve a child with a disability on-site, but may be able to obtain reimbursement for transportation if the child is transported to the LEA to receive services.

7. Some charter schools provide the majority of services with reimbursement by the school districts. To be successful, this model requires planning/meeting time and timely reimbursement.

8. Statutorily, chartered public schools do not have funding that would allow them to take on the responsibility of providing and overseeing the provision of FAPE for a child with a disability.

9. Providing special education and/or related services at the charter school is less disruptive to the child, but may not be the least expensive.

10. School districts find it difficult to hire or contract with certified special educators and related service providers to serve children with disabilities who are attending chartered public schools.

11. A child whose IEP states he/she should receive group services may have to receive them 1:1 based on the student population at the charter school.

12. It is not possible to clearly define differences in costs to provide services in District Schools to the costs of providing them in Charter Schools because special education services are not provided in a vacuum.

13. If a district provides services at a charter public school, the district bears the financial responsibility.

Financial Issues – Solutions or Strategies (including ideas for legislation to address the issues):

1. Uncertainty about the amount of special education cost is unpredictable in all public schools due to the fact that students may move in or out, specialized placements may be made, and students may move from a School District to another School District or a Charter School. Movement of students to Charter Schools is not the only factor causing uncertainty about the cost of special education in School Districts. The larger issue is how School Districts can be supported when sudden financial demands are made on them due to student mobility. This is a larger issue that should be dealt with on a broader basis for those times when students move from district to district and district to charter.
2. Provide targeted CAT Aid or Differentiated Aid to District Schools to support the provision of FAPE to children with disabilities from the School District who attend Charter Schools. There could be a Statute that would provide for state funding for the difference whenever a district could demonstrate that its expenses have increased due to a student moving to a Charter School.

3. If the School District knows that a student will be attending a Charter School, there should not be changes to the IEP until the student has attended the Charter School and a progress meeting is held to discuss whether the IEP should or should not be amended.

4. Establish a state-funded position for a chartered public school officer at the NH DOE to provide oversight of Charter Schools’ academic programs and facilities.

5. Establish a regional system of service providers that School Districts can use to provide services to children with disabilities attending Charter Schools. The Commission believes a solution like this could be difficult logistically due to uncertainty about staffing, scheduling services, and travel.

6. The state could be the LEA for all state-approved charter schools.

7. Provide additional funding, or provide targeted aid, and a process through legislation that would enable chartered public schools to assume the responsibility for providing and overseeing the provision of FAPE to children with disabilities attending chartered public schools.

8. The NH DOE could develop and provide a model contract or MOU for an LEA to use when contracting with a chartered public school to provide direct services. The form could include specific services to be provided including the frequency, duration, and location of the services and the type/certification/licensure of the individual providing the service, and any documentation of procedures and requirements.

9. If charter schools were able to become “approved special education programs” through an alternative approval process, they could apply for IDEA funds to hire special education teacher(s) and/or related service provider(s) to directly serve the children with disabilities attending the chartered public school.

Financial Issues - Additional Input:

1. Input received by the Commission from representatives of chartered public schools and parents of children with disabilities attending chartered public schools supported maintaining, either in total or in part, the current system.

2. Other input received from LEAs, an attorney representing LEAs, and the representative from the NH School Boards Association recommended that the NH DOE should be the LEA for special education purposes for all children with disabilities attending chartered public schools.

3. Information was provided by the NH DOE that they have determined that price setting for services provided to students at charter schools is not feasible, as charter schools are public schools and NH’s rate-setting rules/procedures are designed for private providers of special education services.

4. In addition to special education funding, District Schools and Charter Schools can access other revenue streams. Revenue streams provided to both District Schools and Charter Schools include base funding (Adequacy Payments or Tuition and Additional Grants respectively), Differentiated Aid, Title funds, and Rural Education Achievement Program (REAP) funds.

5. District Schools can receive a Perkins Formula Grant to fund Career and Technical Education Centers.

6. District Schools can access local property tax dollars.

7. Charter Schools authorized by the District can access local property tax dollars because the District pays tuition to the publicchartered school.
Base Payments from the State of New Hampshire

Funding for special education in NH begins with the State’s responsibility to provide an adequate education, i.e. base adequacy, for all students.

Base adequacy is the State’s fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Charters are awarded an additional grant of $2,036 for each pupil who is a resident in attendance. In 2017, charter schools will receive an additional $1,000 per pupil as proposed by HB 563.

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<tr>
<th>Adequacy Payment per Pupil for Grades 1-12</th>
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*CPI adjustment

**As proposed by HB 563

Note: Base Adequacy funding for Kindergarten and VLACS is different than other base adequacy funding.

A common miscalculation is to compare adequacy payments to charter schools to the average cost per public school pupil. It is a comparison of two unrelated quantities.

Adequacy refers to the State’s fiscal responsibility to provide an adequate education to all pupils whether in a district school or charter school. Adequacy per pupil at a district school is $3,561.27. Adequacy per pupil at a charter school is $6,597.27.

The average cost per district public school pupil is $14,001 statewide. It represents the sum of all current expenses—including special education for charter schools— from all funding sources, e.g. state & federal revenues, and property taxes (which are raised locally and stay locally) of every school district associated with their daily operations less transportation, food service revenue, and out of district placement divided by the ADM in attendance statewide. It is an intermediate figure or middle position on a scale of evaluation of all towns and their costs per pupil from Franklin at $10,000 to Errol at $30,000. It is not a sum paid to districts by the State.
RSA 186-C:30, II(d) The nature of the legal relationship between the local education agency and the chartered public school;

This aspect of the commission’s charge includes issues/input related to the oversight or monitoring of special education services for children with disabilities attending chartered public schools.

Legal Relationship – Statutory Requirements (The complete statutes/regulations or relevant excerpts are included in Appendix C):

1. RSA 194-B:11, III addresses the legal relationship and establishes procedures between the child’s resident LEA and the chartered public school attended by a child with a disability.

2. Nondiscrimination – RSA 194-B:8, I states “A chartered public school shall not discriminate nor violate individual civil rights in any manner prohibited by law. A chartered public school shall not discriminate against any child with a disability as defined in RSA 186-C. A chartered public school shall provide due process in accordance with state and federal laws and rules.”

3. Right to FAPE for a Child with a Disability Attending a Chartered Public School – a RSA 194-B:11, I (c) states, “Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child’s parents shall retain all rights under federal and state special education law, including the child’s right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child’s IEP. The child’s resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child’s IEP, and the chartered public school shall cooperate with the child’s resident district in the provision of the child’s special education and related services.”

4. RSA 186-C:15 Length of School Year and Ed 306.18 School Year establish minimum requirements for the length of the school year and school day for a child with a disability (RSA 186-C) and the length of the school year for all children (Ed 306.18).

Legal Relationship – What is Working Well:

1. LEAs and chartered public schools are aware that the decision about whether to enroll a child in a chartered public school lies solely with the child’s parent. The IEP team is responsible for determining a child’s special education placement, but the decision about whether to enroll the child in a chartered public school occurs outside of this process.

2. The Commission heard from a diverse group of stakeholders that, in the majority of instances, the current system is working well, and that school districts and charter schools generally work collaboratively to find solutions to providing special education services in a way that meets the student’s needs.

3. The Commission received input that the process is most effective when a district has a dedicated staff member or team to coordinate the provision and oversight of FAPE to children with disabilities attending chartered public schools, and when a chartered public school has a designated special education coordinator.

Legal Relationship – Challenges:

1. LEAs must fund and provide, either directly or through contractual arrangements, special education and related services to children with disabilities attending chartered public schools, but the LEA has no ability to oversee the child’s full day program, which if the child was attending the district public school, would be coordinated with the child’s special education and related services. It was noted that the inability of the
LEA to provide first-hand oversight of a child’s program may impact the child’s outcomes, and impede the LEA’s ability to identify effective strategies to address any lack of progress the child may be experiencing.

2. If a charter school provides the services, the LEA can only provide input to the quality of services but ultimately, the LEA cannot require remedial action if the services are not adequate for the students’ needs. If a parent wanted to file a complaint or request a due process hearing, the LEA would be in the position of being held accountable for inadequate IEP implementation even though the student is attending a public school in a setting that is not approved for special education service provision by the DOE.

3. Without being able to oversee the provision of general education and tiered interventions, an LEA is unable to utilize the response to intervention option to determine if a child may be a child with a learning disability. This also means that an LEA receives a referral regarding a child attending a chartered public school, the LEA does not have evidence of interventions that have or have not been provided prior to the referral.

4. There is currently no system in place to ensure that either party (the LEA or chartered public school) provides the services they are responsible for, or have agreed to provide.

5. While chartered public schools are not required to have all teachers certified, the LEA must ensure that all special education teachers providing special education services to a child with a disability in accordance with the child’s IEP has requisite special education certification. This is the LEA’s responsibility regardless of whether the LEA provides the services directly using LEA staff, contracts with private providers, or contracts directly with the chartered public school to provide special education and related services to the child.

6. While RSA 194-B:11, III (b) states, “... the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child’s IEP. The child’s special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment [emphasis added] …”, the interpretation of the meaning of LRE is inconsistent, with parents often considering LRE to mean the setting where the child would be if he/she did not have a disability (the chartered public school), and the LEA opting to provide the services at the district public school, which is generally considered to be the LRE for children attending the district public school.

**Legal Relationship – Solutions or Strategies:**

1. Establish a permanent and dedicated state-funded position of a full-time chartered public school officer at the NH DOE whose duties would include: 1) provide oversight of charter schools’ academic programs, funding, and facilities; 2) identify vetted and certified special education service providers by region; 3) support coordination of services among school districts providing special education services for student attending charter schools; 4) act as a liaison between the charter school and school district should there be disagreement in how to provide special education services at the charter school.

2. Establish a monitoring system to ensure that the LEA and chartered public schools are each providing the services for which they are responsible, or that they have agreed contractually to provide.

3. Dedicate one or more DOE special education consultants to focus on the delivery of special education services to children in chartered public schools; provide technical assistance to charter schools, LEAs and parents of children with disabilities who are attending or who are considering attending a chartered public school; and monitoring of chartered public schools.

4. Include in memos, guidance documents and the NH DOE’s Special Education Policy and Procedures Manual, a clear prohibition on a chartered public school denying or discouraging the enrollment of a child on the basis of the child’s disability through screening or any other means, on a LEA having policies, procedures or actions that discourage parents from choosing to enroll their child with a disability in a chartered public school or that encourage parents “opt their child out” of special education while the child is
attending a chartered public school, or that unilaterally reduce a child’s special education and/or related services once the child enrolls in a chartered public school.

5. Provide additional clarity regarding the meaning of the term “least restrictive environment” as it is used in RSA 194-B:11, III (b) “… the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment [emphasis added]:

   (1) The resident district may send staff to the chartered public school; or
   (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
   (3) The resident district may provide the services at the resident district school; or
   (4) The resident district may provide the services at the service provider's location; or
   (5) The resident district may contract with a chartered public school to provide the services; and
   (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.”

This may involve prioritizing the list of options (1)-(5).

6. Clarify in RSA 194-B:11, III(b), who makes the decision about how and where the child’s special education and related services are to be provided. As written, it says, “… the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment …”, but does not clearly specify whether the LEA or the child’s IEP team determines how and where the services are to be provided.

7. Given the requirements in RSA 186-C:15 Length of School Year and Ed 306.18 School Year, when the option for how and when special education services are to be provided to a child with a disability, the LEA must ensure that the child’s school day is not interrupted to the extent that the child is no longer receiving the minimum number of hours of instruction or that the child’s school day is not less than that of a child without a disability. RSA 186-C:15, I says: “I. The length of the school year and school day for a child with a disability shall be the same as that provided by the local school district for a child without a disability of the same age or grade, except that the local school district shall provide an approved program for an extended period when the child's individualized education program team determines that such services are necessary to provide the child with a free appropriate public education.” Ed 306.18 establishes the minimum number of hours of instructional time to be provided for each child in kindergarten, and at the elementary school and middle/high school levels. For elementary school students the number of hours when divided by a 180-day school year is 5.25 hours/day; and for middle and high school students the number of hours when divided by a 180-day school year is 5.5 hours/day. The exceptions listed in Ed 306.18 when the number of hours may be reduced do not include a child being enrolled in a chartered public school.

8. Disseminate, and clarify if necessary, dispute resolution options that may be utilized when parents and the LEA disagree about how or where a child’s special education services are to be provided, or about any other issues related to the provision of special education and related services to children with disabilities attending chartered public schools. This information should specify when and how a complaint would be filed against the chartered public school, and when it would be filed against the LEA. Include these procedures in applicable legislation, rules, the Procedural Safeguards handbook, the NH DOE’s Special Education Policy and Procedures Manual, and for new information, in memos from the NH DOE to the field.

9. Provide information to administrators and staff at chartered public schools about their ability to file a complaint as a third party if they allege that a child’s special education rights have been violated.
10. Investigate whether the student management systems within the NH DOE could help monitor student transfers without violating FERPA.

11. NH DOE develop and provide a model contract or MOU for an LEA to use when contracting with a chartered public school to provide direct services. The form could include specific services to be provided including the frequency, duration and location of the services and the type/certification/licensure of the individual providing the service, and any documentation procedures and requirements, as well as specifying who is responsible for making and providing progress reports to the parent.

12. Do not tie the child’s outcomes (performance on statewide assessment, high school graduation, etc.) to the LEA, except to the extent the outcome is the direct result of the services provided by the LEA; include all such data in reports for the chartered public school instead.

13. Increase NH DOE monitoring of special education programs/services at chartered public schools, particularly to ensure that IEPs for children with disabilities who are attending chartered public schools are being fully implemented and complied with by chartered public schools and LEAs.

14. It was suggested that either the DOE or local districts should be required to periodically audit compliance (the audit percentage need not be high, but with a review of at least a few children with disabilities programs at each chartered public school done annually).

15. One suggestion received by the Commission was to give the NH DOE the oversight responsibility for children with disabilities receiving special education services at a chartered public school.

**Legal Relationship – Additional Input:**

1. The Bureau of Special Education FY’13 Memo #10 (see full memo in Appendix C) describes the process and array of options for serving children with disabilities who are enrolled in a chartered public school; for making and addressing a referral for a child who is suspected of being a child with a disability; and for scheduling and conducting an IEP team meeting, including inviting a representative from the chartered public school to the IEP team meeting.
Other Issues – Challenges:

1. There are some areas in statute that are unclear, ambiguous or conflicting.

Other Issues – Solutions or Strategies:

1. DOE and other appropriate entities conduct joint training/professional development opportunities for administration and staff of chartered public schools and LEAs on the legal relationship between chartered public schools and LEAs, the responsibilities of each in providing a FAPE to children with disabilities attending chartered public schools, relevant procedures, NH special education process and Federal and State special education laws/requirements, and other topics where an identified need for information has been identified, including providing training and information on the needs of students with specific disabilities where a need has been identified.

2. If LEA staff or administrators are utilized to provide training to staff at a chartered public school, provide funding to cover the time and expenses incurred by the LEA staff or administrator to conduct the training.

3. Collect data to identify areas, particularly areas related to the indicators in the State Performance Plan and Annual Performance Report, where individual chartered public schools are achieving outcomes that are substantially higher or lower than the state average or than the LEA in which the chartered public school is located. Areas where the chartered public school’s outcomes are low could lead to targeted assistance, while areas where the chartered public school’s outcomes are high could indicate the use of best practices or other factors that should be disseminated for replication by other charter schools and LEAs. This dissemination could be done through a DOE memo to the field, through professional development and conferences, and/or through web-based information sharing.

4. Through follow-up monitoring or data collection/analysis, determine if the replication of the best practices identified through #1 above result in improved outcomes in LEAs and chartered public schools that utilize these practices.