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EXECUTIVE SUMMARY

Initial Proposal Learn Everywhere Program New Rules

Submitted to the State Board of Education, December 13, 2018:

A. ACTION NEEDED

A vote is needed by the State Board to approve the initial proposal for Ed 1400 relative to the Learn Everywhere Program.

B. RATIONALE FOR ACTION

These rules are being proposed in response to SB 435 which added a new subparagraph to RSA 193-E:2-a, V which reads "(b) The state board of education shall adopt rules, pursuant to RSA 541-A, relative to the approval of alternative programs for granting credit leading to graduation."

C. EFFECTS OF THIS ACTION

If the board votes to approve these rules the department will begin the rulemaking process by submitting the rules to the Office of Legislative Services (OLS) as an initial proposal. A public hearing will be held for these rules at the February 14, 2019 State Board meeting.

D. POSSIBLE MOTION

I move that the State Board of Education approve the initial proposal for Ed 1400 relative to the Learn Everywhere Program and hold a public hearing for these rules on February 14, 2019.

CHAPTER ED 1400 LEARN EVERYWHERE PROGRAM FOR HIGH SCHOOL GRADUATION CREDIT

PART ED 1401 PURPOSE AND SCOPE

Ed 1401.01 Purpose. Parts Ed 1401 through 1406 provide rules of practice and procedure to ensure uniform application of RSA 193-E:2-a, V(b) relative to the approval of alternative programs for granting credit leading to graduation. The commissioner shall develop and implement this program in conjunction with the state board of education.

Ed 1401.02 Scope. These rules shall apply to any for-profit or non-profit entity or any individual(s) that offers an educational program that meets the minimum standards for approval to grant credit leading to graduation.

PART ED 1402 DEFINITIONS

Ed 1402.01 Definitions.

- (a) “Commissioner” means the commissioner of the department of education.
- (b) “Department” means the department of education.
- (c) “Program” means a sequence of instruction over a period of time, which meets the requirements of a subject or subjects listed in Ed 306.27(t) resulting in a granting of credit leading to high school graduation.

PART ED 1403 PROGRAM APPROVAL

Ed 1403.01 Initial Application Requirements.

(a) An applicant seeking state board approval for an alternative program shall complete and file the “Application for Establishing an Alternative Program for High School Graduation Credit” form, June 2018, to the department for review, and include:

- (1) The sponsoring organization’s purpose, mission statement, or both;
- (2) The name and contact information of the individual responsible for oversight and administration of the program for which approval is sought;
- (3) A description of demonstrated qualifications to instruct and a statement assuring that the instructor meets those requirements, which shall not be construed to imply that instructors require a New Hampshire educator license;
- (4) A criminal history records check policy that includes a statement affirming that the sponsoring entity shall not allow instruction by a person who has been charged pending disposition for, or convicted of any violation or attempted violation of any of the offenses as outlined in RSA 189:13-a, V pursuant to a criminal history records check conducted by the department of safety as outlined in Saf-C 5703.06 through Saf-C 5703.11; and

(b) In addition to the application requirements outlined in 1403.01(b), an applicant shall also submit:

(1) In the area of instructional program:

- a. Identification of the program from Ed 306.31 through Ed 306.48 for which students completing the course subject will receive high school credit(s);
- b. An outline of each program for which approval is sought, which includes goals and a description of expected student outcomes;
- c. A plan for recording student progress in meeting expected student outcomes; and
- d. A description of how students will be assessed to determine that they have met the program requirements; and
- e. A description of the system for awarding grades to students, including, but not limited to:
 - i. Pass or fail;
 - ii. Letter grade system; and
 - iii. Competency-based number system 4-1;

(2) In the area of admission:

- a. A description of methods for admission which shall not be designed, intended, or used to discriminate or violate individual civil rights in any manner prohibited by law; and
- b. A policy that describes how the program will coordinate with the local education agency (LEA) for students with an education plan pursuant to section 504 of the rehabilitation act, an individual education plan (IEP), or both, for matters pertaining to any required special education programs, support services, or both, including methods of compliance with all federal and state laws pertaining to children with disabilities;

(3) In the area of minimum standards:

- a. A description of how the program meets the minimum standards for graduation credit for the program as referenced in Ed 306.31 through Ed 306.48; and
- b. Number of credits the program will fulfill; and

(4) In the area of facilities:

- a. A description of facilities to be used for educational instruction and a description of how the facilities will meet the priorities of the program; and
- b. If applicable, a statement affirming that the facilities shall comply with all federal and state health and safety laws, rules, and regulations, including, but not limited to the follow, noting that the participation in this program shall not construe additional facility requirements not otherwise required by state or federal law:
 - i. Fire safety; and
 - ii. Barrier-free access under Abfd 300 and the Americans with Disabilities Act of 1990(ADA), as amended by the ADA Amendments Act of 2008.

Ed 1403.02 Review by Department of Application for State Board Approval.

(a) Pursuant to RSA 541-A:29 the department shall review the application submitted for state board approval within 30 business days of receiving the application to verify completeness and:

- (1) If the application is incomplete, shall notify the applicant by email of the requirements for completion; and
- (2) If the application is complete, shall notify the applicant by email that the application is received and complete.

(b) The department shall provide support to the program where available and needed;

(c) The department shall evaluate the completed application for review by the board using the following criteria:

- (1) The purpose or mission statements express a clear and focused purpose for the program that supports student learning;
- (2) The description of the facilities includes sufficient detail to indicate that priorities will focus on a facility that is appropriate for the activities and students to be served;
- (3) The program outline being proposed aligns with the selected Ed 306.27(t) program area outlined in Ed 306.31 through Ed 306.48;
- (4) There are educational goals and methods for assessment that will be used to measure student progress toward meeting program goals;
- (5) An adequate description is provided for staff member qualifications;
- (7) Verification of a criminal background check policy and an assurance that it will be disclosed to parents upon enrollment; and
- (6) A policy is in place to meet individual student needs and to ensure that the program meets the requirements of Ed 1403.01(b)(2)b.

(d) Pursuant to RSA 541-A:29, within 60 days of the notification of a completed application, the department shall notify the applicant in writing of the date and time of the meeting where the application will be discussed and voted on by the state board.

(e) The department shall submit an evaluation report to the state board along with the application materials for review.

Ed 1403.03 State Board Approval.

(a) The review of applications shall be an item on the agenda of a regularly-scheduled state board meeting.

(b) The state board shall approve, conditionally approve, or deny the application and notify the applicant in writing of its decision.

(c) The state board shall approve the application, after reviewing the application and the department's evaluation under Ed 1403.02, if it determines the application is in compliance with Ed 1403.01.

(d) If the application is not in compliance with the standards referenced in (c), the application shall be conditionally approved if the state board determines that the remaining issues can be readily addressed within timeframe specified by the state board, not longer than 90 days from notification, or it shall be denied.

(e) If the state board:

(1) Conditionally approves an application, the state board shall include in the notification:

- a. A written explanation of the reasons for conditional approval;
- b. The conditions the applicant shall meet for final approval; and
- c. The deadline for submission of the conditions that shall be met for final approval.

(2) Denies an application, the state board shall include in the notification:

- a. A written explanation of the reasons for the denial;
- b. The areas deemed deficient by the state board; and
- c. An explanation that the applicant may reapply for approval at any time.

(f) When the state board receives the conditional approval response from the applicant, the state board shall review the response at the next regularly scheduled state board meeting for discussion and vote and shall notify the applicant in writing of either a final approval, conditional approval, or a denial of the application.

(g) The applicant may appeal a denial or conditional approval by the state board in accordance with Ed 213.

Ed 1403.04 Renewal of an Alternative Program for High School Graduation Credit.

(a) 90 days prior to the expiration of a provisional license or a full license, an applicant seeking license renewal of a program for high school graduation credit shall complete and submit the “Renewal Application for an Alternative Program for High School Graduation Credit” form, August 2018, as specified in Appendix II, along with:

- (1) A statement signed by the sponsor entity or individual(s) stating that there have been no changes to any of the programs or documentation required, as outlined in Ed 1403.01, since the previous application period; or
- (2) A statement signed by the sponsor entity or individual(s) stating there have been changes to one or more approved programs, a list of the changes, and supporting documentation as outlined in Ed 1403.01.

(b) Upon receipt of a renewal application, the department shall follow the review procedures as outlined in Ed 1403.02.

(c) The state board shall consider renewal applications following the procedures outlined in Ed 1403.03.

Ed 1403.04 Changes to Application Information. Any changes to any of the information enumerated in Ed 1403.01 shall be submitted in writing to the department for review and shall be submitted to the state board following the procedures enumerated in Ed 1403.03.

PART 1404 ISSUANCE OF LICENSES, REVOCATION, AND WITHDRAWAL

Ed 1404.01 Issuance of Licenses.

(a) If the state board approves:

- (1) An initial application or a conditional approval of an initial application for establishing an alternative program for high school graduation credit, the state board shall issue a 1-year provisional license, which can be renewed following the procedures outlined in Ed 1403.04; and
- (2) A renewal application or a conditional approval of a renewal application for an alternative program for high school graduation credit, the state board shall issue a 5-year license, which can be renewed every 5 years following the procedures outlined in Ed 1403.04.

(b) If the state board conditionally approves an initial or renewal application for establishing an alternative program for high school graduation credit, the state board shall issue a conditional license, not to exceed 180 days, with a specific deadline for conditions to be met.

(c) A list of approved alternative programs for high school graduation credit shall be maintained on the department's website.

PART 1405 REPORTING REQUIREMENTS

Ed 1405.01 Alternative Program for High School Graduation Credit Report Requirements.

(a) Each approved program shall annually, in September, submit to the state board an annual report which shall include, at a minimum, the following:

- (1) A brief statement explaining how the program is meeting the goals of its mission statement; and
- (2) Number of students enrolled in the program and the number of students awarded certificates leading to high school credits for the previous school year.

PART 1406 PROGRAM COMPLETION CERTIFICATES AND ISSUING CREDIT

Ed 1406.01 Program Completion Certificates.

(a) Within 30 days of a student's successful completion of a program, a completion certificate shall be issued to the student.

(b) Certificates shall be signed by the person designated in Ed 1403.01(b)(2) and the instructor(s) of the program.

(c) Certificates shall contain course identification and credit information, including, but not limited to:

- (1) Course title;
- (2) Course minimum standard alignment as indicated in Ed 1403.01(b)(3);
- (3) Number of credits awarded and the grade attained.

Ed 1406.02 Issuing Credit for Graduation.

(a) Certificates shall be used to grant credit for graduation.

(b) The student shall submit the completion certificate to the high school where they wish to be granted credit, or they shall not receive credit.

(c) Approved New Hampshire schools shall grant students with valid completion certificates high school credit leading to graduation in the area enumerated.

PART 1407 COMPLAINTS, REVOCATION, AND WITHDRAWAL

Ed 1407.01 Complaints and Investigations.

(a) Complaints shall be submitted in writing to the department under one or more of the following circumstances:

- (1) The program commits a material violation of any of the conditions, standards, or procedures set forth in its application;
- (2) The program or sponsor organization knowingly employs a person in violation of Ed 1403.01(b)(6);
- (3) The program or sponsor organization fails to disclose or violates its disclosed criminal history records check policy;
- (4) The program or sponsor organization makes a material misrepresentation in its application;
- (5) The program or sponsor organization becomes insolvent; or
- (6) The program is found to be in violation of any law that undermines the purpose of the program.

(b) All complaints shall be investigated and upon receipt of the complaint, the department shall notify the program and sponsor organization within 15 days of receipt of the complaint that an investigation has been opened.

(d) After completion of an investigation, the department shall present its findings to the state board of education at the next regularly scheduled state board meeting.

(e) If the board determines that the program or sponsor organization has not met one or more of the circumstances enumerated in 1407.01(a) the program or sponsor organization shall be notified in writing within 10 days of the board's finding.

Ed 1407.02 Suspension, Revocation, and Withdrawal.

(a) The department may immediately suspend a license if the department finds that public health, safety, or welfare requires emergency action and incorporates a finding to that effect, pursuant to RSA 541-A:30, III.

(b) The state board shall revoke a program license prior to the expiration of its term if the board determines that the program meets any of the circumstances outlined in Ed 1407.01(a), and shall notify the program or sponsor organization in writing within 10 days of the board's determination.

(c) The state board may place a program on probationary status for up to one year if the board determines that the complaint can be addressed with the implementation of a remedial plan, after which, if the plan is unsuccessful, the license shall be revoked.

(d) A program or sponsor organization may appeal the board's decision pursuant to Ed 213.

Learn Everywhere is a program designed to build on existing New Hampshire educational philosophy, law and rule. At its most basic level, it is simply seeing and understanding our existing public education system and the learning that engages students, from another perspective.

In the book *Leaving to Learn*, Elliot Washor, author and founder of the alternative Met school and Big Picture Learning in Providence, R.I., asks the question, “What if there were ways to provide and give credit for learning wherever and whenever it occurred?” This concept of wherever and whenever has been a continuous pursuit of the state of New Hampshire for more than a decade now. The ideas and concepts are embedded in our educational philosophy, law, and rules, but it has been an elusive target with only marginal attainment.

Education consultant Sir Ken Robinson has stated, “First, education is always and inevitably personal. All students have their own reasons for staying in, or for pulling out of [disengaging from], school. Like you and me, they are living, breathing individuals with their own hopes, motivations, challenges, aptitudes and drives. The current [education] system is failing so many of them¹ because it is impersonal and standardized... The solution is to adopt forms of teaching that arouse students’ appetites for learning.”

Learn Everywhere is just that, an innovative approach to learning passed into law by the 2018 New Hampshire Legislature to capture existing student learning and create an eco-system of additional learning opportunities for our students, wherever and whenever they occur.

Today, the State Board of Education (“SBOE”) is the credentialing oversight board for teachers and schools. The SBOE credentials teachers in New Hampshire to be able to teach in our public schools. The SBOE also authorizes schools in New Hampshire to be able to provide an opportunity for a comprehensive adequate education. *Learn Everywhere* simply unbundles education and says, rather than authorize only entire schools, the state will authorize educational programs to offer part of comprehensive adequate education. If the SBOE credentials teachers, and if the SBOE credentials schools, why not also simply credential a course or a program as well?

¹ In New Hampshire, a top performing state, the “equity gap,” part of which is the disparity between socio economically advantaged students versus students in poverty (family earnings of less than 185% of the federal poverty level) is more than 20%, meaning that poor students consistently over the previous 20 years, have performed lower on standardized assessments, because the education system is not able to engage them.

Practically, what does that mean and what does that look like?

Learn Everywhere is built on a premise of win-win. It sees education as an expanding universe of opportunity that capitalizes on learning across the board.

While for the most part, school takes place from 7:30am – 2:30pm inside a school building for 180 days a year, students are learning outside of that time frame and outside of that location. Some of this “outside the school” learning is formalized, such as after-school tutoring or dance lessons, and some is less formalized, such as an after-school job where a student is gaining valuable capacity across a number of domains. *Learn Everywhere* creates a vehicle to capture all students learning and give students credit for it.

Compared to a zero-sum game, in which the addition of this program takes something away from our already strong public education system, *Learn Everywhere* expands the educational opportunity universe without taking anything away.

Example

Let’s consider a student who loves performing arts and participates in a local Boys and Girls Club (“BGC”) performing arts program. Let’s also assume that the BGC has enrolled its theater arts program as an approved *Learn Everywhere* program.

This student now has the option to participate in the BGC theater arts program for high school credit. While they are participating in the BGC performing arts program, they can also participate in their public school performing arts program, if they want (e.g., nothing is lost). However, if they find that practices at the BGC program, which are three nights a week until 9pm, do not give them enough time to do homework, they could elect to take a study hall in their public school (all schools have study halls in all time blocks) to do their homework so they do not have to do it at night after play practice at the BGC. This student may also decide to take an elective course during that period.

In addition to creating more educational options for the student, it can reduce the level of stress experienced by the student and family, stress representing an increasing problem in our current culture.

What is important to consider with this example is that with or without the *Learn Everywhere* option, the student is already participating in the BGC performing arts program. *Learn Everywhere* simply finds a way for that deep and engaging learning to count for academic credit.

Let's look at a few questions that one might have when considering this program for New Hampshire.

- *So how does the program work?*
 - Applicants interested in offering education opportunities for students will complete an application with information about the program, including the course credit that will be offered (from education rule 306, minimum standards), an outline of the program, how student progress will be monitored and how assessment and grading will be completed.
 - The New Hampshire Department of Education (“NHDOE”) will review the application for completeness. Once complete, applicants will appear before the SBOE and present their program for approval. The SBOE will approve, conditionally approve or deny the application. If the program meets the requirements, the SBOE will authorize the provider a one-year license to operate.
 - During that period, the NHDOE will complete a monitoring visit of the program to determine that it is being implemented as presented to the SBOE. If the NHDOE review is satisfactory, the SBOE will extend a five-year authorization to the program. After five years, the program will be subject to renewal through the initial application process.
 - As students complete the program, they will be awarded a certificate of completion and a grade that they will present to their home district for credit, if the student desires credit.
 - Annually, the programs will report participation and credits awarded to the NHDOE for reporting to the SBOE.

This *Learn Everywhere* process has been modeled after the current Charter School authorization program.

- *How does the Learn Everywhere affect school funding? Is this an unfunded mandate?*
 - *Learn Everywhere* does not affect school funding. Schools will continue to be funded under the current formulas. *Learn Everywhere* does not require the school to create any new programs or administrative supports. Students who complete a *Learn Everywhere* program will receive a certificate with a grade from the participating program. This certificate will be provided to the student's school by the student so that credit can be awarded.
 - Keep in mind that *Learn Everywhere* is simply capturing the learning that is already taking place through student participation in programs outside of school. *Learn Everywhere* creates a pathway for students to

apply that learning toward meeting the minimum standards for graduation established by the SBOE.

- *Shouldn't we require teachers in these programs to be credentialed so that we know the students are getting a good education?*
 - The SBOE and New Hampshire public schools have a long-established policy that is reflected in both law and rule to accept educational credit from non-certified teachers. There is no requirement for teachers in either private or home education settings to be certified. Public Charter schools require that only 50% of teachers be certified. Every year, many students coming out of these education settings transfer to traditional public school settings and higher-education pursuits, and the credits they bring with them are readily accepted.
 - *Learn Everywhere* captures the essence of state minimum education standards which state that we should “harness all available community resources.” (ED 306.04 (k) (6)) *Learn Everywhere* creates a framework to engage engineers to teach our students about engineering, math and physics, artists to engage them on the stage and in the studio, and entrepreneurs to open up the world of business to them. As Clay Christensen writes in the forward of Julie Freeland’s book *Who You know: Unlocking Innovations that Expand student Networks*, *Learn Everywhere* allows those not even part of our traditional education system to “mentor, support and inspire young people.”
 - The assumption that a credentialed educator always results in a better educational outcome is not born out by the underlying data. While that may be true in certain circumstances, the better measure of strong student outcomes is based on their level of engagement in their education. If they are engaged, they will perform better. State academic assessment results show that only about 50% of students in the traditional public school reach proficiency.

- *These programs would be unfair. If the program charged tuition, not every student could afford to pay.*
 - The SBOE has a long and established policy to permit families and students to access private educational options. Thousands of New Hampshire families pay tuition to private schools, affording those students access to a private school option that is not universally available to all New Hampshire students simply because of financial limitations.
 - Many of the programs that might become available to students through this program are offered for free or at reduced rates. In many cases they are readily available to families without financial resources

or are offered on a sliding scale based on capacity to pay. This includes programming through organizations like Boys and Girls Clubs, Girls, Inc. and through many of our public school after-school programs. *Learn Everywhere* has the ability to increase educational options for disadvantaged students and families.

- Many businesses, eager to source qualified employees for their businesses, support excellent learning opportunities, without cost, for those students who show an interest in a particular vocational field. Programs like *Learn Everywhere* will encourage the development of more of these work-based learning opportunities.
 - By unbundling these education options, a family that may not be able to afford a full private education, may be able to afford part of that education in the form of a specific program, resulting in increased access to education options for families.
- *Won't these programs limit opportunities for good teachers if students do some of their learning outside of the traditional school system?*
- Actually the opposite is true. Teachers interested in taking advantage of *Learn Everywhere* will have the ability to pursue teaching in its most pure form. A common refrain heard from teachers is frustration at an overly regulated and burdensome system that causes them to spend more time administrating students than instructing them. An inspired teacher may discover the entrepreneurial aspect of the program and can now set up their own learning program to instruct students. These teachers may teach at a traditional public school during the regular school day, but decide to add an independent program in the afternoon or on a weekend, to pursue teaching in a less restrictive form.
 - Many of the programs may seek out credentialed educators in an effort to provide high quality programming and to differentiate their instruction, creating expanded employment opportunities for educators.
- *But what about accountability? How will we know that students are learning what they need to know?*
- Accountability and assessment are an important part of the program application process. Applicants will describe how they will assess students across the competencies that the student is expected to attain in the same way charter schools do now.
 - One of the really great aspects of *Learn Everywhere* is how seamlessly it fits into and supports the existing public school system. Existing state and federal accountability systems are all still in place. Students are still required to take state and federal accountability assessments.

- *Doesn't Learn Everywhere cross the line and interfere with local control of education?*
 - *Learn Everywhere* does not create a state level high school diploma. The issuance of a diploma is the domain of the local school district. The determination of credit requirements for graduation is a responsibility of the local school board. The SBOE has authorized the minimum standards required for a high school diploma. *Learn Everywhere* is simply a program sanctioned by the SBOE for students to earn credits that count toward meeting those minimum standards that the SBOE has established leading to graduation. Local school boards will still be required to establish local graduation requirements that meet or exceed the minimum standards.

- *Won't this program put students with disabilities at a disadvantage?*
 - Like many other aspects of *Learn Everywhere*, supports for students with an Individual Education Plan (IEP) will follow the existing practice. Presently, when services or special education programs are called out in an IEP to support a student's learning, schools often contract with outside service providers. Authorized *Learn Everywhere* programs will function in the exact same manner. When an IEP team and parents believe that participation in a *Learn Everywhere* program is the right course of action for a student, and it is written into the IEP, *Learn Everywhere* program participants will coordinate with the school to accommodate appropriate services in support of the student. The same approach would apply for students with 504 plans.
 - Every day, schools in New Hampshire contract with outside providers to help students with IEP's in the areas of occupational therapy, physical therapy or speech therapy. *Learn Everywhere* simply expands options for math therapy, language arts therapy, and physical education therapy as well, when the IEP teams sees that as being in the student's best interest.

- *How do we know students will be safe in these alternative programs?*
 - This is a great and vitally important question. In working on this program, one thing discovered is that many families today participate in local student enrichment programs with little or no knowledge of basic safety precautions of the program. For example, parents may have no knowledge of the background checks performed for instructors. Or perhaps they know that background checks are not part of the routine, but close involvement with the program allows them to be comfortable with their student's participation. *Learn Everywhere* has established two basic controls in this area.

- Background checks are required for instructional staff. Instructional staff are prohibited from serving if they have violated or are pending disposition for a RSA 189:13-a V violation. Programs must develop a background check policy and provide that to participating families.
 - Facilities must meet federal and state health and safety requirements that apply if there were not an *Learn Everywhere* program.
- *Won't Administrators of schools oppose this, as they might perceive that they are losing some control over education?*
- The facts are that this program will not diminish administrator control. It will not affect their budgets. It will not affect the programs that they now offer to students. All New Hampshire students will still be offered the same academic opportunities afforded to them now.
 - Rather than losing control, administrators will see that they are gaining a valuable tool to help meet the goal that we share, bringing all students to strong outcomes and bright futures. Perhaps more than anyone else in our state, administrators of schools know the circumstances of students in our schools. They know how large and how persistent the equity gap is. They know that there are certain students who the current system is simply unable to reach or connect with. They often direct these students to alternative education programs to try to find ways to engage them in their education. Administrators will recognize that *Learn Everywhere* gives them yet another tool to be able to help all students succeed.
- *What if an emergency situation arises that requires the program to be suspended?*
- While the program authorization can only occur through the SBOE process, the NHDOE has authority to suspend a program's license to offer credit if they find that there is a public health, safety or welfare concern. When such a suspension occurs, its ultimate resolution will follow the RSA 541-A:30, III adjudicative process with appropriate due process measures to the program operator.