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June 9, 2020

House Committee on Education  
Legislative Office Building, Room 207  
Concord, NH 03301

Dear Chairman Myler and Members of the House Committee on Education,

On February 6, 2020, the Senate acted on Senate Joint Resolutions 1 (SJR 1), a resolution prohibiting the implementation of certain rules of the board of education. This resolution states:

Resolved by the Senate and House of Representatives in General Court convened: That the general court of the state of New Hampshire hereby prohibits the board of education from adopting Ed 1400 as contained in Objection Response 2019-5; and That the general court shall clarify RSA 193-E by legislation that (1) the rulemaking authority of the board of education in RSA 193-E:2-a, V(b) does or does not give the board authority to require that school districts grant credit for courses or programs when the district did not itself approve the curriculum and (2) that RSA 193-E:2-a, V(b) therefore does or does not authorize the board to require a school district to accept the credit if it chose not to.

This resolution is based on a faulty premise in the Final Objection by the Joint Legislative Committee on Administrative Rules ("JLCAR") on October 17, 2019.

In its August 8, 2019 Response to Preliminary Objection, entitled JLCAR Staff Comments to Objection Response 2019-5, Ed 1400 relative to the Learn Everywhere rule proposal, the department outlined the initial faulty premises used by JLCAR Staff in reaching its Preliminary Objection. This letter is attached for reference.

This letter responds to JLCAR Staff's Final Objection and Joint Resolution, dated October 18, 2019.

As context, this response will continue to focus on the statute that was passed by the Legislature and to which the State Board of Education (Board) is responding. RSA 193-E:2-a, V(b) states:

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**.

This mandate to the Board is unambiguous and both the board and the agency understand the important responsibility to have fidelity to the statute in adopting rules:

- The Board **shall** adopt rules. The legislature has ordered the Board to create rules in response to this statute and the Board has proposed ED 1400. Testimony when RSA 193-E:2-a, V(b) was passed made clear how the agency understood this law and how it would be implemented. ED 1400 is consistent with that testimony. Attempts during the last legislative session to modify the agency's understanding of RSA 193-E:2-a, V(b) were not successful, further confirming the agency's approach to implementation.
- **Approval of alternative programs.** New Hampshire public schools, both traditional and charter, have wide latitude in the development and implementation of student programming. The agency's understanding of RSA 193-E:2-a, V(b) is that an alternative or different program be established, not simply a reiteration of that which already exists. ED 1400 accomplishes this goal.
- **For granting credit leading to graduation.** This phrase is quite clear and contains no subjunctive expression of uncertainty. Credits are granted and credit lead towards graduation. There is no conditional verbiage in RSA 193-E:2-a, V(b) such that the agency could understand that credits *may* be granted or that the credits *may* lead to graduation. ED 1400 is limiting in that it does not *result* in graduation, but only leads to it through the accumulation of credit.

1. **JLCAR Objection #1:** Rule Ed 1407.02(a) is contrary to legislative intent to the extent that the rule violates the specific statute RSA 193-E:2-a, V(a), and the rule violates the more general statutory purpose clause RSA 193-E:1, II, because the statutory intent of both was to create a bifurcated system where the Board of Education mandates the minimum standards for graduation, and the local school districts maintain the specific curriculum which dictates the credit needed for those minimum standards for graduation. The proposed rule, in requiring a school district to accept completion certificates for up to 1/3 of graduation credits from a Learn Everywhere Program, violates the statutes because it requires the school district to grant credit for curriculum it has not approved.”

**Department Response:**

**1.1. JLCAR's Additional Note:** “The JLCAR's reference to a ‘bifurcated system’, which the Board takes issue in its Objection Response, was not intended to contradict the ‘integrated system of shared responsibility’ in RSA 193-E:1, II but was meant to reflect the separate responsibilities for the state and the school districts under the last 2 sentences of that same paragraph as underlined below.”

- 1.1.1. JLCAR continues to err in its understanding of RSA 193-E:1, II: While the department understands the position articulated by the JLCAR staff, it respectfully believes that the intent and purpose of the statute is the provision of an “adequate education.” The department believes that ED 1400 is consistent with this purpose by creating opportunity that may not otherwise be afforded students. The JLCAR staff continues to emphasize a “bifurcated” system, as described in its preliminary objection and, in its current objection response as, “separate” responsibilities. In

both cases, the department believes the JLCAR staff has not fully considered the broader legislative purpose of providing “an adequate education.”

**1.2. JLCAR’s Additional Note:** The JLCAR staff’s “understanding from RSA 193-E and the rules was that curriculum is what is completed to earn credit that would lead to graduation.”

1.2.1. The response to preliminary objection outlined how JLCAR erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it asserts that “curriculum is what is completed to earn credit that would allow graduation.” Among other evidences in its response to preliminary objection, the department asserted:

1.2.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))

1.2.2. In addition to the arguments made in its response to the Preliminary Objection, the department further supports its assertion that awarding credits is not inextricably linked to a particular curriculum as JLCAR asserts.

1.2.2.1. Pursuant to Ed 306.27(d), “If a student demonstrates knowledge and skills on a placement pre-test developed by the local school district for a particular course, the student shall receive acknowledgement of achievement of the district competencies contained within the course.” Further, Pursuant to Ed 306.27(f), “Credits shall be based on demonstration of district and or graduation competencies not on time spent achieving these competencies.”

1.2.2.1.1. Nowhere in this language is there mention of curriculum. New Hampshire has led the nation for many years in its progressive education policy that recognizes student mastery by granting credit without a requirement for a particular curriculum. Ed 306.27(f) further emphasizes this point when it states that mastery is not dependent of time spent to achieve the competency.

1.2.2.1.2. Using the logic of the JLCAR staff, students who have already mastered a particular subject area would be required to go through curriculum redundant to their existing knowledge to earn credit. This logic is antithetical to the purpose of the statute of an adequate education and, in fact, risks harm to students.

1.2.2.2. The JLCAR staff argument that assumes curriculum leads to credit is also contradictory to the current practice.

1.2.2.2.1. Curriculum does not always lead to credit: Every year, students engage curriculum unsuccessfully and receive an unsatisfactory grade, indicating that they have not mastered the content of the course and must take the course over until they reach mastery.

1.2.2.2.2. Credit is awarded without curriculum: Every year, hundreds of New Hampshire students decide to take the HiSet high school

equivalency test. New Hampshire has a 91% pass rate for this test which assesses student mastery of content areas required for graduation.

Students who demonstrate mastery on the HiSet are awarded credit and given a New Hampshire high school diploma.

**1.3. Amendment to Ed 1402.02 in response to the Preliminary Objection:** The Board amended the definition of “competency” by adding a definition of “state competency”. The JLCAR staff continues to argue that curriculum and credit are connected, and on that basis, makes an argument against this change.

**1.3.1.** This change to Ed 1402.02 was in response to concerns raised by JLCAR member Representative Schmidt. Representative Schmidt states “since the diploma is granted in the name of and on the authority of the local school board, to the degree that – that elements of it would be effectively forced in against their will, is that not going to cause trouble in the long run?” [p. 16]

**1.3.1.1.** The change to Ed1402.02 is very narrowly construed to make clear what already existed in the draft rule. Namely, that Ed 1400 meets the intent of the statute by creating a program for granting credit leading to graduation, but it does not determine local graduation requirements, preserving the individuality of the local school district diploma. In this way, the Ed 1400 rules result in credit leading to graduation, but do not result in graduation.

**1.3.2. Notwithstanding Ed 306:** The Board added qualifying language to Ed 1407.02(a), “Notwithstanding Ed 306” as well as amending the definition of “competency” by adding a definition of “state competency.” These two changes are designed to make clear that Ed 1400 facilitates the approval of programs for granting credit leading to graduation but do not encroach on local graduation requirements.

**1.3.2.1.** The Board in its final proposal has eliminated the “Notwithstanding Ed 306” language.

**1.4.** As such, the amended Ed 1407.02(a) is not contrary to legislative intent since the rule does not violate the specific statute RSA 193-E:2-a, V(a), and the rule does not violate the more general statutory purpose clause RSA 193-E:1, II

2. **JLCAR Objection #2:** Rule Ed 1400 is contrary to legislative intent to the extent that the rule violates the overall purpose of the statute RSA 193-E because the statute delegates to school districts responsibility for the specific curriculum for which credit is granted;

**Department Response:**

**2.1.** JLCAR continues to err in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that “curriculum is what is completed to earn credit that would lead to graduation.” Nowhere in New Hampshire statute or rule is a student required to complete curriculum in order to receive credit. Such a construct simply does not exist.

**2.1.1.** The response to preliminary objection outlined how JLCAR erred in its understanding of how credit leading to graduation is awarded to New Hampshire

high school students when it asserts that “curriculum is what is completed to earn credit that would allow graduation.” Among other evidences in its response to preliminary objection, the department asserted:

- 2.1.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum, through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))
- 2.1.2. The department further supports its assertion that awarding credits is not inextricably linked to a particular curriculum as JLCAR asserts.
  - 2.1.2.1. Pursuant to Ed 306.27(d), “If a student demonstrates knowledge and skills on a placement pre-test developed by the local school district for a particular course, the student shall receive acknowledgement of achievement of the district competencies contained within the course.” Further, Pursuant to Ed 306.27(f), “Credits shall be based on demonstration of district and or graduation competencies.”
    - 2.1.2.1.1. Nowhere in this language is there mention of curriculum. New Hampshire has led the nation for many years in its progressive education policy that recognizes student mastery by granting them credit. The point of emphasis is on demonstration of mastery, not on how that mastery is obtained.
    - 2.1.2.2. Using the logic of the JLCAR staff, students who have already mastered a particular subject area would be required to go through curriculum redundant to their existing knowledge to earn credit. This logic is antithetical to the purpose of the statute of an adequate education and, in fact, risks harm to students.
    - 2.1.2.3. The JLCAR staff argument that assumes curriculum leads to credit is also contradictory to the current practice.
      - 2.1.2.3.1. Curriculum does not always lead to competency: Every year, students engage unsuccessfully curriculum and receive an unsatisfactory grade, indicating that they have not mastered to content of the course and must take the course over until they reach mastery.
      - 2.1.2.3.2. Credit is awarded without curriculum: Every year, hundreds of New Hampshire students decide to take the HiSet high school equivalency test. New Hampshire has a 91% pass rate for this test which assesses student mastery of content areas required for graduation. Students who demonstrate mastery on the HiSet are awarded credit and given a New Hampshire high school diploma.
- 2.2. The Board also objected in its response to the Preliminary Objection to the overly broad objection of JLCAR, which has asserted that Ed 1400 in its entirety is contrary to the legislative intent of RSA 193-E. This overly broad objection prevents the Board from effectively and substantively responding to concerns of JLCAR.

- 2.2.1. The JLCAR, in its response, simply stated “Unfortunately, the Board does not appear to have reached out to the JLCAR staff for further clarification.”
    - 2.2.2. The department finds this response inadequate.
    - 2.2.3. The department read and understood the JLCAR response as written. There is not a burden on the department to clarify the JLCAR intent beyond the written objections.
      - 2.2.3.1. The department continues to believe that the JLCAR objection, in its preliminary response, is overly broad, and on that basis, invalid.
  - 2.3. As such, the department continues to believe that the amended Rule Ed 1400 is not contrary to legislative intent since the rule does not violate the overall purpose of the statute RSA 193-E.
3. **JLCAR Objection #3:** Rule Ed 1407.02(a) is beyond the Board's authority because RSA 193-E:2-a, V(b) does not give the Board the authority to require a school district to grant credit for programs or courses when the school district did not itself approve the curriculum;

**Department Response:**

- 3.1. JLCAR continues to err in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that: “curriculum is what a school, course, or program uses to facilitate the student’s learning to ensure he or she can achieve competency.”
- 3.1.1. The response to preliminary objection outlined how JLCAR erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it asserts that “curriculum is what is completed to earn credit that would allow graduation.” Among other evidences in its response to preliminary objection, the department asserted:
    - 3.1.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum, through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))
    - 3.1.2. In addition to the arguments made in its response to the Preliminary Objection, the department further supports its assertion that school districts are already required to award credit to students who have not experienced district approved curriculum.
      - 3.1.2.1. Pursuant to Ed 306.27(d), “If a student demonstrates knowledge and skills on a placement pre-test developed by the local school district for a particular course, the student shall receive acknowledgement of achievement of the district competencies contained within the course.” Further, Pursuant to Ed 306.27(f), “Credits shall be based on demonstration of district and or graduation competencies.”
        - 3.1.2.1.1. Nowhere in this language is there mention of curriculum. New Hampshire has led the nation for many years in its progressive education policy that recognizes student mastery by granting them credit. The point

of emphasis is on demonstration of mastery, not on how that mastery is obtained.

3.1.3. JLCAR has also made a logical fallacy in its argument. JLCAR basically states, all curriculum leads to competency; all competency leads to credit; therefore, all curriculum leads to credit.

3.1.3.1. This logical construction is faulty both affirmatively and negatively as an argument.

3.1.3.1.1. Curriculum does not always lead to competency: Every year, students engage unsuccessfully curriculum and receive an unsatisfactory grade, indicating that they have not mastered to content of the course and must take the course over until they reach mastery.

3.1.3.1.2. Competency is attained without curriculum: Every year, hundreds of New Hampshire students decide to take the HiSet high school equivalency test. New Hampshire has a 91% pass rate for this test which assesses student mastery of content areas required for graduation.

3.1.3.1.3. While it can be true that curriculum leads to competency which leads to credit, it is not absolute that all curriculum leads to competency or that curriculum is the only pathway to competency. These principles are deeply embedded in New Hampshire education law and rule.

3.1.3.1.4. There is additional evidence that, in the current system, neither curriculum nor competency are correlated with credit. In 11<sup>th</sup> grade, New Hampshire students are given a proficiency assessment in Math, English and Science. Statewide proficiency on these assessments is 48%, 58% and 41%. At the ends of 12th grade, close to 90% of New Hampshire students graduate from high school, an indication that they have mastered the required content. One might make the argument for a portion of graduating New Hampshire students, that, while they have experienced curriculum and have received credit, they have not achieved competency.

**3.2.** JLCAR errs in its assertion that “The Board could create a system of approval for programs that would lead to credit for graduation that the schools could opt into using” would be compliant with RSA 193-E:2-a, V(b).

3.2.1. RSA193-E:2-a, V(b) is clear that programs for granting credit leading to graduation. It does not indicate that the programs might lead to credit or would lead to credit if the local school board decides to accept the credit.

3.2.1.1. The legislature is very clear in many areas of law when it delegates to local schools the requirement to establish a policy on a topic. This is not one of those cases. RSA193-E:2-a, V(b) does not state that the Board shall adopt rules requiring local school districts to adopt a policy for granting credit leading to graduation. Credits are to be granted and must lead to graduation.

**3.3.** JLCAR errs in its assertion that “RSA 193-E:2-a, V(b) only allows the Board to approve alternative programs that would grant credit. It does not appear to allow the Board to force the school district to accept the credit if it chose not to.”

3.3.1. JLCAR has not referenced RSA 193-E:2-a, V(b) in its entirety by excluding the words “leading to credit.” Credit granted to a student that is not accepted by a local school district would not lead to graduation and would not meet the requirements of RSA 193-E:2-a, V(b).

3.4. As such, Rule Ed 1407.02(a) is not beyond the Board's authority because RSA 193-E:2-a, V(b).

\* \* \* \* \*

In its response to a preliminary objection, JLCAR “legal counsel shall examine the rules to see if there are any potential problems which might serve as grounds for a final objection pursuant to RSA 541-A:13, V(f), sponsorship of a joint resolution pursuant to RSA 541-A:13, VII, or, if available, a revised objection response pursuant to RSA 541-A:13,V(e).” [201.04(a)]

The conclusion of the JLCAR Staff Comments To Objection Response 2019-5, Ed 1400 states that JLCAR may vote to approve the proposed rule as written, or vote to make a Final Objection to the rule and/or vote to sponsor a Joint Resolution on the grounds that:

- Ed 1407.02(a) is contrary to legislative intent
- Ed 1407.02(a) is beyond the Board’s authority

As enumerated in our response to the specific objections, New Hampshire public school students are awarded credit based on “demonstration of district or graduation competencies” (ED 306.27 (f)). Graduation itself is based not on participation in a particular curriculum, but on “mastery of required graduation competencies.” (ED 306.27 (e)) This has been demonstrated through a number of both affirmative and negative arguments.

As modified in the response to the Preliminary Objection and this response to the JLCAR Staff Comments To Objection Response 2019-5, Ed 1400, students are eligible to receive high school credit under ED 1400 for demonstration of mastery of State Competencies in a Required Subject included in the minimum standards (ED 306.27 (t)) and schools retain their ability to preserve the individuality of their local high school diploma by determining required graduation competencies, which local graduation requirements may go beyond the State minimum requirements for graduation.

As such, we believe Ed 1400, as amended is consistent with and has full fidelity to the legislative intent of RSA 193-E:2-a, V(b) and is within the rulemaking authority delegated to it pursuant to that statute.

\* \* \* \* \*

New Hampshire has long led the country in its evolution toward competency based learning or personalized learning approaches. The U.S. Department of Education defines these as:

Transitioning away from seat time, in favor of a structure that creates flexibility, allows students to progress as the demonstrate mastery of academic content, regardless of time, place of pace of learning.



Reflecting on the continued assertion by JLCAR linking curriculum and credit, it leaves one with the impression that JLCAR remains unfamiliar with the idea of competency/personalized learning. At its foundation, competency/personalized learning asks the question, what has a student mastered, in terms of content, not how a student mastered the content. This output based approach, according to the U.S. Department of Education, helps save both time and money, “By enabling students to master skills at their own pace, competency-based learning systems help to save both time and money.”

The department recognizes the importance and validity of the JLCAR process and its feedback on the proposed ED 1400 rules. We have carefully considered those objections and have made appropriate amendments to the proposed ED 1400 rules with the goal of being both responsive to JLCAR, and maintaining fidelity to RSA 193-E:2-a, V(b) and fidelity to the overall purpose of RSA 193-E. These amended rules effectively achieve these goals. We urge the Legislature to reject SJR 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Edelblut". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Frank Edelblut  
Commissioner



Kate Cassady  
Littleton

Ann Lane  
Durham

Phil Nazzaro  
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AUG 08 2019

*Preliminary* OBJECTION  
RESPONSE FP 2019-5

August 8, 2019

State of New Hampshire  
Joint Legislative Committee on Administrative Rules  
25 Capitol St.  
State House Annex Room 219  
Concord, NH 03301

Dear Committee:

On July 18, 2019 the New Hampshire State Board of Education (Board) received a preliminary objection for notice number 2019-5, Ed 1400 Learn Everywhere from the Joint Legislative Committee on Administrative Rules (Committee). On August 8, 2019 the Board voted on a preliminary objection response consisting of amendments to the final proposal for Ed 1400, Learn Everywhere for objections 1, 5, 6, 7, and 8. No rule amendments were made in response to objections 3 and 4, but rather the Board's response asserts that the Committee has erred in its understanding of how credits are granted to New Hampshire public school students.

The State Board's response is as follows:

1. **Committee Objection:** Rule Ed 1407.02(a) is contrary to legislative intent to the extent that the rule violates the specific statute RSA 193-E:2-a, V(a), and the rule violates the more general statutory purpose clause RSA 193-E:1, II, because the statutory intent of both was to create a bifurcated system where the Board of Education mandates the minimum standards for graduation, and the local school districts maintain the specific curriculum which dictates

the credit needed for those minimum standards for graduation. The proposed rule, in requiring a school district to accept completion certificates for up to 1/3 of graduation credits from a Learn Everywhere Program, violates the statutes because it requires the school district to grant credit for curriculum it has not approved;

**Board Response:**

- 1.1. The Committee has erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that “local school districts maintain the specific curriculum which dictates the credit needed for those minimum standards for graduation.”
  - 1.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))
  - 1.1.2. RSA 193-H:1-a, V further contradicts the objection by the Committee that it is “the specific curriculum which dictates the credit.” This statute states, “Competency-based strategies provide flexibility in the way that credit is earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities.” There is no nexus established between “credits earned and awarded” and “curriculum.”
  - 1.1.3. To clarify this difference, Ed 1402.01, Definitions has been modified so that the definition of Competency is now: “Competency means State Competencies” and a definition of State Competencies has been added which states: “State Competencies means the expected content, concepts and skills to be mastered in a course. State Competencies shall be deemed equivalent to Graduation Competencies (Ed 306.02(j)) solely for the purpose of granting credit in the areas enumerated in 306.27 (t) table 306-2.”
  - 1.1.4. In addition, Ed 1407.01(c)(4)a has been modified as follows: “Mastery to indicate completion of the program having met or substantially met all State Competencies which results in a granting of credit:”
  - 1.1.5. Under this construct, students demonstrating mastery of State Competencies shall be eligible to receive credit, and local districts will continue to define local “graduation competencies” preserving the uniqueness of the local diploma.
- 1.2. The Committee has erred in its understanding of the general statutory purpose clause RSA 193-E:1, II, when it states that the statutory intent was to create a “bifurcated system.” Certainly there is an understanding of cooperation. RSA 193-E:1, II describes this as an “integrated system of shared responsibility,” not a “bifurcated system,” as the Committee has stated. The distinction here is important. In the Committee’s objection, using the concept of bifurcation, a term not found in the statute, it asserts exclusivity stating that “the local school districts maintain the specific curriculum.” This exclusivity is contradicted by actions of the legislature itself.

- 1.2.1. RSA 193-I establishes math learning communities in public secondary schools. Through this program, the legislature imposes uniformly on all school districts curriculum for “Course I, advanced math foundations,” and “Course II, quantitative reasoning.” Local school districts which were not part of developing this curriculum are required to grant students math credit for successful completion of these two courses. RSA 193-I:2, II states, “This course provides one math credit toward high school graduation.” RSA 193-I:2, III states, “... upon satisfactory completion shall satisfy the math requirement for high school graduation.”
  - 1.3. As such, the amended Ed 1407.02(a) is not contrary to legislative intent since the rule does not violate the specific statute RSA 193-E:2-a, V(a), and the rule does not violate the more general statutory purpose clause RSA 193-E:1, II.
2. **Committee Objection:** Rule Ed 1400 is contrary to legislative intent to the extent that the rule violates the overall purpose of the statute RSA 193-E because the statute delegates to school districts responsibility for the specific curriculum for which credit is granted;  
**Board Response:**
  - 2.1. The Committee has erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that it is: “school districts responsibility for the specific curriculum for which credit is granted.”
    - 2.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum, through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))
    - 2.1.2. RSA 193-H:1-a, V further contradicts the objection by the Committee that it is “school districts responsibility for the specific curriculum for which credit is granted.” This statute states, “Competency-based strategies provide flexibility in the way that credit is earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities.” There is no nexus established between “credits earned and awarded” and “curriculum.”
  - 2.2. The Committee has erred in its understanding of RSA 193-E when it states, “Rule Ed 1400 is contrary to legislative intent to the extent that the rule violates the overall purpose of the statute RSA 193-E because the statute delegates to school districts responsibility for the specific curriculum for which credit is granted.”
    - 2.2.1. The Board does not concede that RSA 193-E delegates solely to school districts responsibility for specific curriculum, as the Committee asserts.
    - 2.2.2. RSA 193-E:1, II describes the overall system as an “integrated system of shared responsibility,” not one in which school districts have been granted exclusive “responsibility for the specific curriculum for which credit is granted,” as the

Committee has stated. This idea of exclusivity is contradicted by actions of the legislature itself.

2.2.2.1. RSA 193-I establishes math learning communities in public secondary schools. Through this program, the legislature imposes uniformly on all school districts curriculum for “Course I, advanced math foundations,” and “Course II, quantitative reasoning.” Local school districts which were not part of developing this curriculum are required to grant students math credit for successful completion of these two courses. RSA 193-I:2, II states, “This course provides one math credit toward high school graduation.” RSA 193-I:2, III states, “... upon satisfactory completion shall satisfy the math requirement for high school graduation.”

2.3. The Board also objects to the overly broad objection of the Committee, which has asserted that Ed 1400 in its entirety is contrary to the legislative intent of RSA 193-E. This overly broad objection prevents the Board from effectively and substantively responding to concerns of the Committee.

2.4. As such, the amended Rule Ed 1400 is not contrary to legislative intent since the rule does not violate the overall purpose of the statute RSA 193-E.

3. **Committee Objection:** Rule Ed 1407.02(a) is beyond the Board's authority because RSA 193-E:2-a, V(b) does not give the Board the authority to require a school district to grant credit for programs or courses when the school district did not itself approve the curriculum;

**Board Response:**

3.1. The Committee has erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that: “a school district to grant credit for programs or courses when the school district did not itself approve the curriculum.”

3.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having experienced a district curriculum, through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))

3.1.2. RSA 193-H:1-a, V further contradicts the objection by the Committee that it is delegated to “a school district to grant credit for programs or courses when the school district did not itself approve the curriculum.” This statute states, “Competency-based strategies provide flexibility in the way that credit is earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities.” There is no nexus established between “credits earned and awarded” and “curriculum.”

3.2. The Committee has erred in its understanding of Board authority when it states, “Rule Ed 1407.02(a) is beyond the Board's authority because RSA 193-E:2-a, V(b) does not

give the Board the authority to require a school district to grant credit for programs or courses when the school district did not itself approve the curriculum.”

3.2.1. The Board does not concede that RSA 193-E:2-a, V(b) delegates solely to school districts responsibility for specific curriculum, as JLCAR asserts. The plain language of RSA 193-E:2-a, V(b) gives the State Board power for “approval of alternative programs for granting credit leading to graduation.” This is a mandate to require that the credits be accepted, otherwise they would not lead to graduation.

3.2.2. RSA 193-E:1, II describes the overall system as an “integrated system of shared responsibility,” not one in which school districts have been granted exclusive responsibility for curriculum approval, as the Committee has stated. This idea of exclusivity is contradicted by actions of the legislature itself.

3.2.2.1. RSA 193-I establishes math learning communities in public secondary schools. Through this program, the legislature imposes uniformly on all school districts curriculum for “Course I, advanced math foundations,” and “Course II, quantitative reasoning.” Local school districts which were not part of developing this curriculum are required to grant students math credit for successful completion of these two courses. RSA 193-I:2, II states, “This course provides one math credit toward high school graduation.” RSA 193-I:2, III states, “... upon satisfactory completion shall satisfy the math requirement for high school graduation.”

3.3. The Board does not concede that pursuant to RSA 193-E:2-A, V(b) the Board does not have the authority to delegate solely to require a school district to grant credit for programs or courses when the school district did not itself approve the curriculum.

3.4. As such, Rule Ed 1407.02(a) is not beyond the Board's authority because RSA 193-E:2-a, V(b) authorizes alternative programs for granting credit that lead to graduation and RSA 193-E:1, II describes the overall system as an “integrated system of shared responsibility”.

4. **Committee Objection:** Rule Ed 1407.02(a) is contrary to the public interest because it conflicts with the existing rule Ed 306.27. The conflict creates a situation where the rules cannot be uniformly applied because a school district must at the same time approve a curriculum before granting credit and yet grant credit for that same curriculum without approving it first;

**Board Response:**

4.1. The Committee has erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that: “a school district must at the same time approve a curriculum before granting credit and yet grant credit for that same curriculum without approving it first.”

4.1.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not part of a particular curriculum and, in fact, students may be granted credits without ever having

experienced a district curriculum, through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))

4.2. The Committee has erred in its understanding that, “a school district must at the same time approve a curriculum before granting credit and yet grant credit for that same curriculum without approving it first.” This idea that a school must approve a curriculum before granting credit is contradicted by action of the legislature itself and the plain actions of school districts.

4.2.1. RSA 193-I establishes math learning communities in public secondary schools. Through this program, the legislature imposes uniformly on all school districts curriculum for “Course I, advanced math foundations,” and “Course II, quantitative reasoning.” Local school districts which were not part of developing this curriculum are required to grant students math credit for successful completion of these two courses. RSA 193-I:2, II states, “This course provides one math credit toward high school graduation.” RSA 193-I:2, III states, “... upon satisfactory completion shall satisfy the math requirement for high school graduation.”

4.2.2. During the 2018-2019 school year, thousands of New Hampshire high school students participated in dual enrolment courses through the Community College System. Local school districts which were not part of developing these curricula regularly grant credit to participating students.

4.3. As such, no “conflict” exists in Rule Ed 1407.02(a) and it is not contrary to public interest.

5. **Committee Objection:** Rule Ed 1407.02(a) is contrary to the public interest because it conflicts with the existing rule Ed 306.21(h) regarding the requirement that staff assigned to alternative programs meet the same certification requirements as staff assigned to standard schools. The conflict creates a situation where school districts would be accepting credit from a program without knowledge of the teacher's credentials;

**Board Response:**

5.1. The Committee has erred by conflating alternative programs defined in Ed 306.21(h) with the same words, although not a defined term, in Ed 1400.

5.1.1. Alternative programs defined in Ed 306.21(h) derives its distinct meaning from that rule and are distinctly different from a program as defined in Ed 1402.01 (i).

5.1.2. Ed 1402.01(b) and (i) have been modified to avoid possible confusion and to clearly distinguish an Ed 1400 program from an Ed 306.21 program.

5.2. The Committee has erred in its understanding of how credit leading to graduation is awarded to New Hampshire high school students when it states that: “school districts would be accepting credit from a program without knowledge of the teacher's credentials.”

5.2.1. Pursuant to Ed 306.27(f), “Credits shall be based on the demonstration of district and or graduation competencies...” Awarding credits is not based on the certifications or other credentials held by a teacher as the Committee has

stated. Rather, students are granted credit through their demonstration of “mastery of graduation requirements.” (Ed 306.27(e))

5.2.2. School districts today regularly accept credits from out of state schools, private schools and home education transfer students without validation of educator credentials and, in many cases, with knowledge that these educators do not hold New Hampshire or other state credentials.

5.2.3. During the 2018-2019 school year, thousands of New Hampshire high school students participated in dual enrolment courses through the Community College System. Many of the Community College System instructors function as adjunct professors and, while they may hold professional credentials, do not hold teaching credentials. Local school districts readily accept these student credits, “without knowledge of the teacher’s credential.”

5.3. As such, the amended Rule Ed 1407.02(a) is not contrary to the public interest because it does not conflict with the existing rule Ed 306.21(h).

6. **Committee Objection:** Rule Ed 1407.02(b) is contrary to the public interest because it is unclear and thus cannot be uniformly applied. The rule is unclear because it does not account for how a school district is to apply credit that it is required to grant if a student has already fulfilled that credit area;

**Board Response:**

6.1. Ed 1407.01 has been modified to add (d): “Students applying more than the required credit leading to graduation may petition the school to allow that credit to count toward another Required Subject enumerated in Ed 306.27(t). If that petition is denied, the credit shall be applied to the designated credit area and the student will have accumulated excess credits in that credit area.”

6.2. As such, the amended Rule Ed 1407.02(b) is not contrary to the public interest because it is clear and can be uniformly applied.

7. **Committee Objection:** Rule Ed 1409.01(a) is contrary to the public interest because it conflicts with Ed 403.01(a)(2)o. Ed 1409.01(a) allows for complaints to be submitted to the Department of Education but excludes complaints that might be made regarding student safety from bullying, harassment, or abuse, because the program is not required to have the grievance policy required by Ed 403.01(a)(2)o.; and

**Board Response:**

7.1. The Committee has erred in its application of 403.01(a)(2)o to Ed 1400 programs.

7.1.1. Ed 403.01(a)(2)o applies to “An applicant seeking initial approval as a nonpublic school for attendance purposes.” Ed 1402.01(h) defines: “School means a New Hampshire public school, public academy, or chartered public school that contains any of the grades 9-12.” Therefore 403.01(a)(2)o does not apply.



- 7.1.2. ED 1409.01(a) has been modified: “Complaints shall be submitted in writing to the department under circumstances including, but not limited to, one or more of the following,” which broadens its application.
- 7.2. As such, Rule Ed 1409.01(a), as amended, is not contrary to the public interest because it does not conflict with Ed 403.01(a)(2)o.

8. **Committee Objection:** Rule Ed 1401.02(c) is beyond the authority of the Department because it conflicts with RSA 193-E:2-a, V(b) since it expands the Learn Everywhere Program to include programs that would not grant credit if the programs would help a student make progress toward one or more of the student’s goals set forth in his or her IEP.

**Board Response:**

- 8.1. Ed 1401.02(c) has been modified by striking “or that assist a student in making progress towards one or more of the student’s annual goals or appropriate measurable postsecondary goals as set forth in the student’s IEP and determined by the IEP team.”
- 8.2. Ed 1407.01(c) (4)b. has been modified stating: “Participate to indicate the program was completed without having met or substantially met all State Competencies. The IEP team may conclude that participation shows growth toward one or more of a student’s annual or appropriate measurable postsecondary goals.”
- 8.3. As such, the amended Rule Ed 1401.02(c) is not beyond the authority of the Department because it has been amended to only include programs that will result in the granting of credit that lead to graduation in accordance with RSA 193-E:2-a, V(b).

Please accept this letter and the attached annotated and amended Ed 1400 Learn Everywhere proposal as the Board’s response to the Committee’s preliminary objection.

Sincerely,



Drew Cline, Chairman  
State Board of Education

DC/ap

Adopt Ed 1400 to read as follows:

CHAPTER Ed 1400 LEARN EVERYWHERE PROGRAM FOR HIGH SCHOOL GRADUATION  
CREDIT

PART Ed 1401 PURPOSE AND SCOPE

Ed 1401.01 Purpose. Part Ed 1401 through Part Ed 1407 provide rules of 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, referred to as learn everywhere programs. The commissioner shall develop and implement this program in conjunction with the state board of education.

Ed 1401.02 Scope.

(a) These rules shall apply to any for-profit or non-profit entity that offers an educational program, consistent with these rules, that meets the minimum standards for approval to grant credit leading to graduation.

(b) These rules shall apply to students, emancipated minors, or students with disabilities in accordance with their individualized education program (IEP) as determined by the IEP team.

(c) Approved learn everywhere programs shall result in certificates that lead to high school graduation credit ~~or that assist a student in making progress towards one or more of the student's annual goals or appropriate measurable postsecondary goals as set forth in the student's IEP and determined by the IEP team.~~

(d) These rules shall apply to all school districts or local education agencies (LEAs).

PART Ed 1402 DEFINITIONS

Ed 1402.01 Definitions.

(a) *“Alternative” means a choice of one or more opportunities.*

(b) *“Alternative program” means a learn everywhere program.*

(ac) “Commissioner” means the commissioner of the department of education.

(bd) “Competency” means ~~the expected content, concepts, and skills to be mastered in a course~~ *state competencies as defined in Ed 1402.01(i).*

(be) “Department” means the department of education.

(ef) “Individualized education program (IEP)” means “individualized education program” as defined in 34 CFR 300.22 and which meets the requirements in Ed 1109.

(dg) “Learn everywhere program” means a state board approved alternative program for granting credit leading to graduation.

(eh) “Local education agency (LEA)” means “local education agency” as defined in 34 CFR 300.28.

(fi) “*Office of academics and professional learning (OAPL)*” means the office of academics and professional learning at the department of education.

(gj) “Program” means a sequence of instruction over a period of time, which meets the *state* competencies of a subject or subjects listed in Ed 306.27(t) resulting in a granting of credit leading to high school graduation.

(hk) “School” means a New Hampshire public school, public academy, or chartered public school that contains any of the grades 9 through 12.

(l) “*State competency*” means the expected content, concepts and skills to be mastered in a course which shall be deemed equivalent to graduation competencies in accordance with Ed 306.02(j) solely for the purpose of granting credit in the areas enumerated in Ed 306.27(t) table 306-2.

(im) “State board” means the New Hampshire state board of education.

#### PART Ed 1403 PROGRAM APPROVAL

##### Ed 1403.01 Initial Application Requirements.

(a) An applicant, as defined in Ed 1401.02(a), seeking state board approval for an alternative program shall complete and submit the “Application for Learn Everywhere Program” March 2019 edition, 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 and a statement assuring that the instructor satisfies those qualifications, which shall not be construed to imply that instructors require a New Hampshire educator license; and
- (4) A criminal history records check policy that includes a statement affirming that the sponsoring entity shall not allow instruction or student contact 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.

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

- (1) In the area of instructional program:
  - a. Identification of the education, program, or opportunity from Ed 306.27(t) for which students completing the learn everywhere program shall receive high school credit(s);

- b. An outline of each program for which approval is sought, which includes goals, competencies, and a description of expected student outcomes;
- c. A plan for recording student progress in meeting expected student outcomes; and
- d. A description of assessments of student learning outcomes, including, but not limited to:
  - 1. Instructor observation of project-based learning, including off-site learning projects;
  - 2. Competency-based or performance based assessments;
  - 3. Instructor observations of student performance;
  - 4. Project evaluation rubrics used to evaluate program proficiencies; and
  - 5. Other assessment approaches as determined by the learn everywhere program;

(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;
- b. A description of how the program will liaison with the local education agency (LEA) for students with an education plan pursuant to section 504 of the Rehabilitation Act;
- c. A description of how the program will liaison with the LEA for a student with disabilities, consistent with the student's IEP to include, but not be limited to coordinating:
  - 1. Required special education programs;
  - 2. Support services; and
  - 3. Least restrictive environment; and
- d. A statement that the program understands that it has certain responsibilities, pursuant to Section 504 of the Rehabilitation Act, if it receives Federal funds, or the Americans with Disabilities Act, as amended, to provide students with disabilities with equal access and equal opportunities to participate in the learn everywhere program, including by providing the student with reasonable accommodations;

(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;
- b. Number of credits the program will fulfill; and
- c. A competency-based grading description;

(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;
- b. A statement affirming that the facilities shall comply with all applicable federal and state health and safety laws, rules, and regulations, including, but not limited to the following:
  - 1. Fire safety; and
  - 2. Barrier-free access under Abfd 300, code for barrier-free design, and the Americans with Disabilities Act of 1990(ADA), as amended by the ADA Amendments Act of 2008; and
- c. Participation in the learn everywhere program shall not require facility requirements not otherwise required by state or federal law; and

(5) In the area of insurance:

- a. Proof of insurance for protection of children in care and in amounts as recommended by the program’s insurance provider, which provider shall be licensed to do business in the state of New Hampshire and which the department shall be an additional named insured so as to receive notice of policy changes or cancellations;
- b. A policy for signature of parents or legal guardians of students, or emancipated minors, referred by an LEA to an approved Learn Everywhere program, which states “I (the parent/legal guardian of, *or the emancipated student*, \_\_\_\_\_/\_\_\_\_\_, ~~an emancipated student,~~) covenant and agree at all times to indemnify and hold harmless the (school district), their school boards, officers, directors, agents, employees, all funding districts and sources, and their successors and assigns, (the “indemnified parties”) from any and all claims, demands, actions and causes of action, whether in law or in equity, and all damages, costs, losses, and expenses, including but not limited to reasonable attorneys’ fees and legal costs, for any action or inaction of the state approved Learn Everywhere program, its board, officers, employees, agents, representatives, contractors, guests and invitees, or pupils.”

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

(a) Upon receipt of an application, the department shall form an ad hoc learn everywhere program approval committee comprised of the following members appointed by the commissioner or designee:

- (1) From the department:

- a. The administrator of the office of academics and professional learning (OAPL), or designee, who shall serve as chair of the committee;
- b. Department representatives with content area expertise, curriculum competency expertise, or both;

(2) Additional members, whose reasonable availability shall not interfere with the timely review of the application pursuant to RSA 541-A:29 *including*:

- a. A representative from the extended learning opportunity network; and
- b. No less than 1 and no more than 2 New Hampshire state board licensed educators licensed in the content area enumerated on the application, where at least one shall be currently teaching in that content area in a school, as defined in Ed 1402.01(h).

(b) 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.

(c) The department shall provide support to the *applicant during the* application process.

(d) The learn everywhere program approval committee shall convene and 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) subject and the subject program as outlined in Ed 306.31 through Ed 306.48;
- (4) There are educational goals, competencies, and methods for assessment that will be used to measure student progress toward meeting program goals and competencies;
- (5) An adequate description is provided for staff member qualifications;
- (6) Verification of a criminal background check policy and an assurance that it will be disclosed to parents upon enrollment; and
- (7) A description of how the program will meet individual student needs and to ensure that the program meets the requirements of Ed 1403.01(b)(2)b.

(e) 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.

(f) The administrator of OAPL shall submit the evaluation report to the commissioner who shall submit such report and a recommendation 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 Ed 1403.03(c), the application shall be conditionally approved if the state board determines that the remaining issues can be addressed in a timeframe not to exceed 90 days from notification by the state board, otherwise the application shall be denied.

(e) If the state board conditionally approves an application, the state board shall include in the notification:

- (1) A written explanation of the reasons for conditional approval;
- (2) The conditions the applicant shall meet for final approval;
- (3) The deadline for submission of the conditional approval response; and
- (4) The consequence for failure to comply with the conditional approval requirements.

(f) If the state board denies an application, the state board shall include in the notification:

- (1) A written explanation of the reasons for the denial;
- (2) The areas deemed deficient by the state board; and
- (3) An explanation that the applicant may reapply for approval at any time.

(g) 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.

(h) 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 approval, *pursuant to Ed 1404.01(a)*, or a full approval, *pursuant to Ed 1404.01(b)*, an applicant seeking renewal of a learn everywhere program approval shall complete and submit the “Application for Learn Everywhere Program” March 2019 to the department along with the following:

(1) A statement signed by the sponsor entity 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 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.

(d) The state board shall not issue a renewal of a one-year provisional approval without reviewing all evaluations received pursuant to 1407.01.

Ed 1403.05 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 Ed 1404 PROGRAM APPROVAL, REVOCATION, AND WITHDRAWAL

Ed 1404.01 State Board Approval.

(a) If the state board approves 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 approval, which can be renewed following the procedures outlined in Ed 1403.04.

(b) If the state board approves 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 approval, which may be renewed every 5 years following the procedures outlined in Ed 1403.04.

(c) If the state board conditionally approves a renewal application for a learn everywhere program, the state board shall issue a conditional approval, not to exceed 180 days, with a specific deadline for conditions to be met.



(d) A list of approved learn everywhere programs and their approval status shall be maintained on the department's website.

#### PART Ed 1405 REPORTING REQUIREMENTS

Ed 1405.01 Alternative Program for High School Graduation Credit Reporting Requirements. Each approved program shall annually, in September, submit to the state board a report which shall include, at a minimum, the following:

- (a) A brief statement explaining how the program is meeting the goals of its mission statement; and
- (b) ~~The~~ *The* 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 Ed 1406 STUDENT ENROLLMENT REQUIREMENTS

Ed 1406.01 Responsibility of the LEA.

(a) If a child with an IEP notifies the school of his or her intent to participate in a learn everywhere program, the LEA shall:

- (1) Follow the procedures enumerated in Ed 1109.03(h) and 34 CFR 300.324 to schedule an IEP team meeting; and
- (2) If requested by the child's parent or member of the IEP team, invite a representative from the learn everywhere program to attend the IEP team meeting.

(b) If the IEP team decides to redraft, revise, amend, or modify the IEP, the IEP team shall:

- (1) Determine what, if any, special education, related services, supplementary aids and services, accommodations, and modifications the student needs to participate in the program; and
- (2) Be responsible for providing the student with the special education, related services, supplementary aids and services, accommodations, and modifications the IEP team has determined the student needs pursuant to (1) above.

(c) The IEP team may decide not to redraft, revise, amend, or modify the IEP for reasons including, but not limited to:

- (1) The program would not assist the student in making progress towards one or more of the student's annual goals or appropriate measurable postsecondary goals in the student's IEP, regardless of whether the program will result in the student earning a high school credit;
- (2) *The program* ~~is~~ is not necessary for the student to receive a free appropriate public education (FAPE); or

(3) *The program is Nnot* be safe for the student, even if the student were provided with special education, related services, accommodations, and other supports and services.

(d) If a student's parent disagrees with the determination of the IEP team regarding the student's placement in a learn everywhere program, the parent may follow the procedures outlined in Ed 1121 through Ed 1123 regarding complaints, alternative resolutions, and due process hearings.

#### PART Ed 1407 PROGRAM COMPLETION CERTIFICATES AND ISSUING CREDIT

##### Ed 1407.01 Program Completion Certificates.

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

(b) Certificates shall be signed by the person designated in Ed 1403.01(a)(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

(4) Either:

a. "Mastery" to indicate completion of the program having met or substantially met all *state* competencies which results in a granting of credit; or

b. "Passrticipate" to indicate the program was completed *without having met or substantially met all state competencies. An IEP team may conclude that participation* shows growth toward one or more of a student's annual or appropriate measurable post-secondary goals ~~in accordance with an IEP, which does not result in the granting of credit.~~

*(d) Students applying more than the required credit leading to graduation may petition the school to allow that credit to count toward another required subject enumerated in Ed 306.27(t). If that petition is denied, the credit shall be applied to the designated credit area and the student will have accumulated excess credits in that credit area.*

##### Ed 1407.02 Issuing Credit for Graduation.

(a) *Notwithstanding Ed 306,* Schools shall accept at least 1/3, and may accept as much as 100 percent if approved by the superintendent, of the total number of credits required for high school graduation, if requested by a student pursuant to (c) below.

(b) Approved New Hampshire schools shall grant students with valid completion certificates from approved learn everywhere programs high school credit leading to graduation in the area enumerated on the certificate. Credits earned from learn everywhere programs shall appear on high school transcripts but shall not negatively affect the student's grade point average.

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

(d) Program completion certificates earned by students while not enrolled in a school, as defined in Ed 1402.01(h), shall only be granted credit if approved by the school superintendent.

#### PART 1408 DEPARTMENT MONITORING OF APPROVED LEARN EVERYWHERE PROGRAMS

##### Ed 1408.01 Monitoring.

(a) To determine if all standards are met as specified in the application and approval and as specified in Ed 1403.01 each approved learn everywhere program shall be reviewed and have an on-site monitoring visit conducted by OAPL as follows:

- (1) One on-site visit during the one-year provisional approval; and
- (2) At the discretion of the department any time during any approval period.

(b) OAPL shall issue a written report of findings to the monitored program indicating compliance or noncompliance with statutes and rules relative to all programmatic components of the approved learn everywhere program to the commissioner.

(c) The commissioner shall submit the report of findings to the state board no later than 30 days after receiving the report.

(d) If the state board determines from the report that the program is not being implemented as approved, the department shall initiate an investigation as outlined in Ed 1409.

#### PART Ed 1409 COMPLAINTS, REVOCATION, AND WITHDRAWAL

##### Ed 1409.01 Complaints and Investigations.

(a) Complaints shall be submitted in writing to the department under *circumstances including, but not limited to*, 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 violates Ed 1403.01(a)(4);
- (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.

(c) 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.

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

Ed 1408.02 Suspension, Revocation, and Withdrawal.

(a) The department may immediately suspend a program approval 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 approval 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 program approval shall be revoked.

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

**Appendix I**

<b>Rule</b>	<b>Statute</b>
Ed 1400	RSA 193-E:2-a, V(b)