

JLCAR STAFF COMMENTS TO OBJECTION RESPONSE 2019-5, Ed 1400

The JLCAR on July 18, 2019 had eight bases for its preliminary objection, characterized as Objections #1 through #8 below. Three remain in the view of JLCAR staff as noted on pages 1-5, and five have been eliminated as explained on pages 5-7. These comments are derived from a review of the Objection Response by JLCAR Attorney Christina Muñiz, with further editing by Administrative Rules Director Scott Eaton. There is an “Appendix” with rules and relevant RSAs on pages 8 through 10.

OBJECTIONS REMAINING

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”.

NOTE: RSA 193-E:1, II is part of the purpose clause for RSA 193-E, and RSA 193-E:2-a, V(a) is the rulemaking authority for the Board as quoted below. The JLCAR’s reference to a “bifurcated system”, with 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.

RSA 193-E:1 Policy and Purpose

“I. It is the policy of the state of New Hampshire that public elementary and secondary education shall provide all students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come; an education that is consistent with the minimum standards for public school approval, the state-established academic standards, and school district or school curriculum.

“II. Respecting New Hampshire's long tradition of community involvement, it is the purpose of this chapter to ensure that appropriate means are established to provide an adequate education through an integrated system of shared responsibility between state and local government. In this system, the state establishes minimum standards for public school approval and academic standards for inclusion and delivery of education services at the local level. School districts have the responsibility and flexibility in implementing diverse educational approaches to instruction and curriculum tailored to meet student needs.” [emphasis added]

RSA 193-E:2-a Substantive Educational Content of an Adequate Education

“V. (a) The general court requires the state board of education and the department of education to institute procedures for maintaining, updating, improving, and refining the minimum standards for public school approval for each area of education identified in paragraph I. Each school district shall be responsible for maintaining, updating, improving, and refining curriculum. The curriculum shall

present educational goals broad pedagogical approaches and strategies for assisting students in the development of the skills, competencies, and knowledge called for by the minimum standards for public school approval for each area of education identified in paragraph I. It is the responsibility of local teachers, administrators, and school boards to identify and implement approaches best suited for the students in their communities to acquire the skills and knowledge included in the curriculum, to determine the scope, organization, and sequence of course offerings, and to choose the methods of instruction, the activities, and the materials to be used.

(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.” [emphasis added]

Background. The minimum school approval standards in Ed 306 define various terms and describe how much credit a student must have in each subject area to graduate from a school in the state of New Hampshire. (See relevant rules in Ed 306 in the Appendix on p. 8 of these comments). The JLCAR’s understanding from RSA 193-E and the rules was that curriculum is what is completed to earn credit that would lead to graduation. The “curriculum” (see definition in RSA 193-E:2-a, V(c) in Appendix) is what the schools use to facilitate the learning that leads to competency in an area and thus to the granting of credit. Thus, it appears that proposed rule Ed 1407.02(a) is contrary to legislative intent because it is the Board that is authorized by statute to dictate what minimum amount of credit must be earned by a student to allow him or her to graduate, but it is the school or school district that is authorized by statute to determine what curriculum is appropriate for the students in that community to use to earn the credit.

Conclusion. The Board’s Objection Response does not eliminate the basis for objection because Ed 1407.02(a) still requires that “schools shall accept at least 1/3 [of the credit] required for high school graduation, if requested by a student pursuant to [Ed 1407.02](c) below.” It appears under the provisions of RSA 193-E that to accept credit is to accept curriculum because curriculum is what leads to competency and thus credit. 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 ground that Ed 1407.02(a) is contrary to legislative intent as it did in its Preliminary Objection.

Board’s Explanation in the Objection Response

The Board’s Objection Response disagrees with the JLCAR’s understanding of RSA 193-E and how credit is awarded. As noted above, the JLCAR found curriculum and credit to be connected. The Board does not. JLCAR staff did not find the Board’s argument persuasive for several reasons.

Definitions. In explaining its view, the Board cites to rules Ed 306.02(j) defining “graduation competencies” and Ed 306.27(e) and (f) relative to competencies and credit, as follows:

"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))"

The Board also amended Ed 1402.02 by amending the definition of “competency” and adding a definition of “state competency”.

The definitions in Ed 306.02 (see Appendix on page 8 of these comments) for both “district competencies” and “graduation competencies” refer to competencies as "common across the district" which implies that it is the local school districts who are determining how the competencies are met and not the Board. The Objection Response’s new definition of “state competency” attempts to separate it from graduation competencies. However, RSA 193-E:2-a, V(a) states "The curriculum shall present educational goals, broad pedagogical approaches and strategies for assisting students in the development of the skills, competencies, and knowledge called for by the minimum standards for public school approval for each area of education identified in paragraph I." [emphasis added] Under RSA 193-E it

does not appear that competencies, curriculum, and credit can be separated from each other as the Board attempts to do here by rule.

RSA 193-H. The Objection Response selectively relies on RSA 193-H:1-a, V (see Appendix on p. 9 of these comments) on school performance and accountability to assert that “there is no nexus between ‘credits earned and awarded’ and ‘curriculum’.” However, when taken as a whole, RSA 193-H can be read as a as supporting, or at least not opposing, the JLCAR’s Objection #3 that the Board does not have authority under RSA 193-E:2-a, V(b) to force school districts to accept credit for curriculum it has not approved. For example, there are limits on the state’s rulemaking authority under RSA 193-H:2, III and an explicit prohibition in RSA 193-H:5 against the state taking control of the daily operations of a school.

RSA 193-I. In challenging the JLCAR’s use of the word “bifurcated”, the Objection Response also cites to RSA 193-I on math requirements set by the legislature as evidence that school districts do not have exclusive control over curriculum. Under RSA 193-I:2 (see Appendix p. 9 & 10) the legislature chose to specify certain math courses, for which the school district must grant credit only if it uses them. It is therefore not a mandate, but permissive. Moreover, as the lawmaking branch the legislature may choose to mandate acceptance of certain courses, but the Board as a state agency, whose lawmaking authority through rulemaking derives solely from the legislature, may not. The Board does not have such authority under RSA 193-E to make such a mandate in rules.

Not Applicable. In any case, RSA 193-H and RSA 193-I are not applicable to the Committee’s objection on the legislative intent of RSA 193-E:1, II and RSA 193-E:2, V(a) or the underlying issue in Objection #3 of the Board’s authority under RSA 193-E:2-a, V(b) to set a mandate. Ed 1400 implements RSA 193-E, not RSA 193-H or RSA 193-I.

“Notwithstanding Ed 306.” As described below, in response to the JLCAR’s Objections #4 and #5 that Ed 1400 conflicts with Ed 306.27 and Ed 306.21(h), the Board added the blanket exception of “notwithstanding Ed 306” to amend Ed 1407.02(a). That amendment removed the bases for those objections, but its broad reach makes unclear the Board’s reliance on rules in Ed 306 above in its arguments for Objections #1 through #3. This “notwithstanding” amendment could be construed by JLCAR as raising a new objection that Ed 1407.02(a) as amended is contrary to the public interest by being unclear.

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.”

Background. It appears that the overall purpose of RSA 193-E was to create a system where the Board establishes the minimum academic standards and then the local school districts or schools establish the curriculum based on those minimum standards. It was understood by JLCAR that curriculum is what is completed to earn credit that would lead to graduation. The minimum standards describe how much credit a student must have in each subject area to graduate from a school in New Hampshire. The curriculum is what the schools use to facilitate the learning that leads to competency in an area and thus to the granting of credit. Therefore, it appears that the purpose of RSA 193-E was to authorize the Board to create a system where the Board dictates what minimum amount of credit must be earned by a student to allow him or her to graduate, but the school or school district must determine what curriculum is appropriate for the students in that community to use to earn the credit.

Conclusion. The Board's Objection Response does not eliminate the basis for objection because Ed 1400 appears to still be contrary to legislative intent by violating the overall purpose of RSA 193-E. JLCAR may vote to approve the proposed rule as written, vote to make a Final Objection to the rule on the ground that Ed 1407.02(a) is contrary to legislative intent as it did in its Preliminary Objection, or

vote to sponsor a Joint Resolution. JLCAR may also vote to make a Final Objection and sponsor a Joint Resolution at the same time.

Board's Explanation in the Objection Response

The Board's Objection Response is similar to that for Objection #1, denying that school districts under RSA 193-E have sole responsibility for a specific curriculum, so the JLCAR staff disagrees with the Board's position as under Objection #1. But the Board also states:

"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."

Unfortunately, the Board does not appear to have reached out to the JLCAR staff for further clarification.

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."

Background. Based on the definitions in Ed 306, competencies are what a student must demonstrate to show that he or she has the required understanding of a subject. Curriculum is what a school, course, or program uses to facilitate the student's learning to ensure he or she can achieve competency. Credit is the record keeping mechanism the school uses to show others that the student has completed the curriculum satisfactorily enough to meet the required competencies.

Conclusion. The Board's Objection Response still includes the requirement of proposed rule Ed 1407.02(a) that "schools shall accept at least 1/3" of the credit "required for high school graduation, if requested by a student pursuant to (c) below." Thus, the proposed rule appears to still be 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 district did not itself approve the curriculum. JLCAR may vote to approve the proposed rule as written, or vote to make a Final Objection and/or vote to sponsor a Joint Resolution on the ground that Ed 1407.02(a) is beyond the Board's authority as it did in its Preliminary Objection.

Board's Explanation in the Objection Response

The Board's Response is similar to that for Objection #1, and so the same issues apply. However, the essence of the Board's argument that Ed 1407.02(a) is not beyond the Board's authority is the following assertion:

"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."

What the RSA Says. Nowhere in RSA 193-E:2-a, V(b) is there a "mandate to require that the credits be accepted". The statute only says that the Board shall adopt rules "relative to the approval of alternative programs for granting credit leading to graduation." The Board could create a system of approval for programs that would lead to credit for graduation that the schools could opt into using. The Board could also create rules that would set criteria for the schools to use to approve the alternative programs on their own that would grant credit leading to graduation.

The JLCAR has determined in its Preliminary Objection that the statute does not give the Board the authority it would like. 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. The Board's Objection Response does not explain adequately how the statute does give the Board this authority.

ELIMINATED OBJECTIONS

OBJECTION #4

"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."

The Board's Objection Response adds the language "[n]otwithstanding Ed 306" to proposed Ed 1407.02(a). This change eliminates conflicts that the proposed rule had with Ed 306.27 because it specifically directs the regulated community to disregard the requirements of Ed 306 and instead follow the requirements of Ed 1407. However, this broad exception to Ed 306 makes unclear, as noted on page 3 above, the Board's argument in Objection #1 through Objection #3 which depends in part on Ed 306.

The Board's Objection Response nevertheless also makes similar arguments as in Objections #1 and #3 about its authority, by citing to RSA 193-I. The Board's reference to RSA 193-I:2 is unclear as it appears to state that the legislature does not have the power to create laws and that RSA 193-I:2 forces a school district to adopt curriculum that it has not approved. First, the legislature is allowed to adopt laws that would force a school district to use a specific curriculum. The legislature's authority to do so is not at issue here. Further, when read in its entirety RSA 193-I:2 does not force a school district to use curriculum it has not approved because this statute is permissive and not mandatory.

OBJECTION #5

"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."

Ed 306.21(h) states:

"(h) Staff assigned to alternative programs shall meet the same certification requirements as staff assigned to standard schools in accordance with Ed 306.15."

The Board's Objection Response adds the language "[n]otwithstanding Ed 306" to proposed Ed 1407.02(a). This change eliminates conflicts that the proposed rule had with Ed 306.21(h) because it specifically directs the regulated community to disregard the requirements of Ed 306 and instead follow the requirements of Ed 1407.

OBJECTION #6

"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."

Ed 1407.02(b) states:

“(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.”

The Board's Objection Response adds paragraph Ed 1407.01(d) which reads as follows:

“(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.”

The addition of this paragraph by the Board appears to eliminate the basis for objection because it is now clear how a school district must apply credit that is additional to already completed credit areas. Thus, proposed Ed 1407.02(b) should be able to be uniformly applied.

OBJECTION #7

" 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."

Ed 403.01(a)(2)o. states:

"(a) An applicant seeking initial approval as a nonpublic school for attendance purposes (AA) shall be recommended approved status for (AA), if the applicant complies with the following requirements:

...

(2) The letter of intent includes the following components:

...

o. A copy of the school's grievance policy including but not limited to procedures to address complaints concerning:

1. Bullying;
2. Teacher misconduct;
3. Repayment of tuition when a student leaves the school; and
4. the use of child restraint practices;"

The Board has changed the proposed rule text for the introduction of Ed 1409.01(a) so that it now reads: "Complaints shall be submitted in writing to the department under circumstances including, but not limited to, one or more of the following:". A list of 6 circumstance under which a complaint can be filed follows. This list includes the catch-all phrase that a complaint is to be filed if "[t]he program is found to be in violation of any law that undermines the purpose of the program." RSA 193-F, known as the Pupil Safety and Violence Prevention Act of 2000, establishes laws to protect students from bullying and violence in New Hampshire schools. RSA 193-F:4, I(b) protects students from bullying or violence if the negative actions or communications occur outside of the school environment but interfere "with a pupil's educational opportunities".

The purpose of the proposed rules is to create more education opportunities that would lead to graduation credit, so bullying in a Learn Everywhere Program would violate RSA 193-F. Further, New Hampshire has criminal statutes to protect its minor citizens from harassment and abuse. Thus, although the Learn Everywhere Program is not required to have a similar type of grievance policy as Ed 403.01(a)(2)o. requires for nonpublic schools, a person would still be able to address these types of grievances by making a complaint directly to the Department pursuant to Ed 1409.

The addition of a definition of "alternative program" in the proposed rule text also serves to link the alternative program to the Learn Everywhere Program for purposes of Chapter Ed 1400 and further differentiates these programs from "schools" as used in Ed 403.01.

The Board's Objection Response appears to eliminate the conflict with Ed 403.01(a)(2)o. by ensuring that complaints can be filed with the Department regarding bullying, harassment, or abuse regardless of an established grievance policy.

OBJECTION #8

"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 annual goals set forth in his or her IEP."

RSA 193-E:2-a Substantive Educational Content of an Adequate Education

"V(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."

The Board's Objection Response removes language from proposed Ed 1401.02(c) and changes language in proposed Ed 1407.01(c)(4)b. These changes appear to have eliminated the concern that the Department would overstep its authority by including programs that would not grant credit to students.

APPENDIX—RELEVANT STATUTES AND RULES

RSA 193-E:2-a Substantive Educational Content of an Adequate Education

"V(c) '**Curriculum**' means the lessons and academic content taught in school or in a specific course or program."

Ed 306 MINIMUM STANDARDS FOR PUBLIC SCHOOL APPROVAL

Ed 306.02 Definitions.

.....
"(d) '**Competencies**' means student learning targets that represent key content-specific concepts, skills, and knowledge applied within or across content domains. Specific and required types of competencies include district competencies and graduation competencies;"

"(e) '**Credit**' means the record keeping structure that is awarded to a student who demonstrated achievement or graduation competencies organized around the specific credit;"

.....
"(g) '**District competencies**' mean specific types of competencies that are common across the district and organized in developmental progressions that lead to achievement of graduation competencies;" [emphasis added]

.....
"(j) '**Graduation competencies**' means specific types of competencies that are common across the district and define learning expectations for each student for graduation from high school;" [emphasis added]

NOTE: The Objection Response adds the following definition in Ed 1402.01(l):

“ '**State competency**' means the expected content, concepts and skills to be mastered in 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.”

Ed 306.27 High School Curriculum, Credits, Graduation Requirements, and Cocurricular Program.

.....
"(e) The local school board shall require that graduation be based on mastery of required graduation competencies as demonstrated through the accumulation of credits as outlined in Table 306-5 and by a certified educator. Each high school shall determine how completion of a classroom course, career and technical education courses, independent study, distance learning course, or extended learning opportunity can support student achievement and demonstration of district or graduation competencies."

"(f) Credits shall be based on the demonstration of district and or graduation competencies not on time spent achieving these competencies. The credit shall equate to the level of rigor and achievement necessary to master competencies that have been designed to demonstrate the knowledge and skills necessary to progress toward college level and career work."

.....
(t) The 20 credits required for graduation shall be distributed as specified in Table 306-2:

Table 306-2 Required Subjects and Credits for High School Graduation

Required Subjects	Credit(s)
Arts education	½ credit
Information and communications technologies	½ credit
English	4 credits
Mathematics	3 credits, including algebra credit that can be earned through a sequential,

	integrated, or applied program
Physical sciences	1 credit
Biological sciences	1 credit
US and NH history	1 credit
US and NH government/civics	½ credit
Economics, including personal finance	½ credit
World history, global studies, or geography	½ credit
Health education	½ credit
Physical education	1 credit
Open electives	6 credits
Totals	20 credits

RSA 193-H School Performance and Accountability

RSA 193-H:1-a Purpose

"V. Competency-based strategies provide flexibility in the way that credit can be earned and awarded and provide students with personalized learning, including those that are offered through on-line, blended, and community based opportunities."

RSA 193-H:2 Statewide Performance Targets.

I. On or before the 2018-2019 school year, schools shall ensure that all pupils are performing at the proficient level or above on the statewide assessment as established in RSA 193-C.

II. In addition to the requirement of paragraph I, schools shall meet performance based indicators under this chapter, and statewide performance targets as approved by the legislative oversight committee established in RSA 193-C and thereafter, as established in rules adopted by the state board of education pursuant to RSA 541-A.

III. Notwithstanding RSA 541-A, the state board of education shall receive approval from the legislative oversight committee established in RSA 193-C prior to the submission of any rules to the joint legislative committee on administrative rules relative to statewide performance targets and performance based indicators required under this section.

RSA 193-H:5 Powers of the Department of Education

"Nothing in this chapter shall be construed to permit either the department of education or the state board of education to take control of the daily operations of any local public school."

RSA 193-I Math Learning Communities Program in Public Secondary Schools

RSA 193-I:2 Structure and Sequence:

"I. Eligible students shall have completed to be hear completion of algebra I. The department shall encourage every public high school in the state to administer the Next-Generation Acuplacer QAS exam to students who may benefit from this program as recommended by a school teacher or guidance counselor and a parent in the spring of grade 10. Students who score less than 63 and who have the recommendation of a teacher or guidance counselor and a parent may be assigned to course I, advanced math foundations. Students who score 63 or above shall be considered for either algebra II or course II, quantitative reasoning.

II. Course I, advanced math foundations, is a review and expansion of a student's understanding and ability to apply fundamental competencies in algebra, geometry, probability, and statistics. This course provides one math credit toward high school graduation.

III. Course II, quantitative reasoning, is a college level math course for students achieving a 63 or above on the Next-Generation Acuplacer QAS exam. This course can be taken through the concurrent dual enrollment program and upon satisfactory completion shall satisfy the math requirement for high school graduation and the math requirement associated with many degree programs at the community college system of New Hampshire. This course may be offered to students in grades 11 or 12."

Hand-delivered
8-8-19 @ 12:00pm



Kate Cassady
Littleton

Ann Lane
Durham

Phil Nazzaro
Newmarket

Drew Cline, *Chairman*
Bedford

Helen G. Honorow
Nashua

Cindy C. Chagnon
Bedford

Celina Griffin
Gilford

STATE OF NEW HAMPSHIRE
STATE BOARD OF EDUCATION
101 Pleasant Street
Concord, NH 03301
TEL. (603) 271-3144
FAX (603) 271-1953

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~~ 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 not necessary for the student to receive a free appropriate public education (FAPE); or

(3) *The program is Not 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. "Participate" 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

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



STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES
ROOM 219
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312

Action Minutes

OCTOBER 17, 2019

Members Present: Representatives Hatch, McGuire, Schmidt, Williams, Hoelzel, Lang*, Fontneau*, Karrick*, and Bershtein*, and Senators Reagan, Dietsch, Kahn, Watters, and Ward. (*) Indicates alternate member.

(**) Part 1, Article 28-a of the N.H. Constitution was not an issue in the Committee's discussions or decisions in this meeting.

1. The meeting was convened at 9:01 a.m. by Rep. Hatch as Chair.

Members present at this time, aside from Rep. Hatch, were Reps. McGuire, Schmidt, Williams, Hoelzel, Lang, Fontneau, Karrick, and Bershtein, and Senators Reagan, Dietsch, Kahn, Watters, and Ward.

Since no regular members were absent at this time, Rep. Hatch did not designate any alternates for regular members.

2. The Committee discussed the minutes of the Committee meeting on September 20, 2019.

Sen. Reagan moved that the minutes be approved.

Rep. Schmidt seconded.

Adopted.

3. The Committee discussed the following items on the Consent Agenda:

CONSENT AGENDA

2. Committee Approval of Final Proposals:

FP 2019-123	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services FANF Intentional Program Violations
FP 2019-125	INSURANCE DEPARTMENT Continuing Care Retirement Communities
FP 2019-126	DEPARTMENT OF ENVIRONMENTAL SERVICES Cross-Program Rules Expediting Review of Applications
FP 2019-127	GOVERNING BOARD OF ATHLETIC TRAINERS Organizational and Procedural Rules
FP 2019-136	DEPARTMENT OF LABOR Definitions & Accident Reporting Requirements for Fatality and Serious Injury

- FP 2019-138 DEPARTMENT OF REVENUE ADMINISTRATION
Agency Action on Petitions for Redetermination or Reconsideration
- FP 2019-150 DEPARTMENT OF REVENUE ADMINISTRATION
Business Tax Technical Corrections
- FP 2019-151 DEPARTMENT OF REVENUE ADMINISTRATION
First Rollout of Revenue Information Management System (RIMS)

3. Committee Conditional Approvals:

- FP 2019-69 PEASE DEVELOPMENT AUTHORITY
Rules Regarding Permitting and Setting Moorings and Anchorages
- FP 2019-133 BOARD OF FAMILY MEDIATOR CERTIFICATION
Continuing Education and Requirement to Screen
- FP 2019-142 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Commissioner
Child-Placing Agency Licensing Requirements

Rep. Schmidt moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals in Item #2 and conditionally approve the Final Proposals in Item #3 based on the agencies' conditional approval requests.

Sen. Reagan seconded.

Adopted.

4. The Committee discussed the response by the Board of Education to the Committee's preliminary objection to Final Proposal 2019-5 (Learn Everywhere Program for High School Graduation Credit). Commissioner Frank Edelblut and Amanda Phelps of the Department of Education testified for the Board.

Rep. McGuire moved that the Committee approve the rules in the Objection Response.

Sen. Ward seconded.

A roll call vote was called. The vote was as follows:

	Yes	No
Rep. McGuire	X	
Rep. Hoelzel	X	
Rep. Schmidt		X
Rep. Williams		X
Rep. Hatch		X
Sen. Dietsch		X
Sen. Kahn		X
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters		X
Totals	4	6

The vote was 4 “yes” and 6 “no”. The motion was not adopted.

Sen. Kahn then moved that the Committee make a final objection to Final Proposal 2019-5, as amended in the Objection Response, on the following grounds:

1. Rule Ed 1407.02(a) in the Preliminary Objection Response 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, as outlined in Committee staff comments;
2. Rule Ed 1400 in the Preliminary Objection Response is contrary to legislative intent to the extent that the rule violates the overall purpose of the statute RSA 193-E, as outlined in Committee staff comments; and
3. Rule Ed 1407.02(a) in the Preliminary Objection Response is beyond the Board's authority as outlined in Committee staff comments.

Sen. Watters seconded.

A roll call vote was called. The vote was as follows:

	Yes	No
Rep. McGuire		X
Rep. Hoelzel		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Hatch	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	X	
Totals	6	4

The vote was 6 “yes” and 4 “no”. The motion was adopted.

Sen. Kahn then moved that the Committee vote to sponsor a joint resolution on the same grounds as for the Final Objection and that the resolution:

1. Prohibit the Board from adopting Ed 1400 as contained in Objection Response 2019-5; and
2. Recommend that the General Court clarify that the rulemaking authority of the Board in RSA 193-E:2-a, V(b) 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. In other words, the General Court should clarify that the statute does not authorize the Board to force a school district to accept the credit if it chose not to.

Sen. Watters seconded.

Rep. McGuire requested that Item #2 in the joint resolution say “does or does not” instead of “does not”, and Sen. Kahn accepted that as an amendment.

Rep. Watters seconded the amendment.

A roll call vote was called on the motion as amended. The vote was as follows:

	Yes	No
Rep. McGuire		X
Rep. Hoelzel		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Hatch	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	X	
Totals	6	4

The vote was 6 “yes” and 4 “no”. The motion was adopted.

5. The Committee discussed an emergency rule (Document #12895, effective October 10, 2019) from the Board of Education (School Use Aid). Commissioner Frank Edelblut and Amanda Phelps of the Department of Education testified for the Board.

It was the consensus of the Committee to take no further action on the emergency rule.

6. The Committee discussed an emergency rule (Document #12896, effective October 10, 2019) from the Board of Education (Robotics Education Fund). Commissioner Frank Edelblut, Amanda Phelps, and Nathaniel Green of the Department of Education testified for the Board.

Rep. McGuire moved that the Committee petition the Board of Education pursuant to RSA 541-A:4 to readopt Ed 1304 with amendment as a regular rule with a recommendation that the following concerns be addressed in the regular rulemaking process:

(1) There was a concern about oral rulemaking in the emergency rule regarding the placement of grant application deadlines only on the Board’s website and form instead of in the rules, in violation of RSA 541-A:22, I and RSA 188-E:24-a, VI as noted in Committee staff annotations to the rule. The grant deadline must be in the regular rules; and (2) In submitting a Request for Fiscal Impact Statement (FIS) from the Office of Legislative Budget Assistant (LBA) pursuant to RSA 541-A:5, I and IV, the Board should indicate the costs and benefits due to all changes from the regular rules prior to the emergency rule, since an emergency rule filing does not have an FIS, and the LBA would normally focus the FIS on the cost and benefits of changes from the existing (emergency) rule.

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed Final Proposal 2019-68 from the Department of Justice (Victims’ Compensation). Patrick J. Queenan and Lisa Lamphere testified for the Department.

Sen. Watters and Rep. McGuire left the meeting during the discussion of this item. Rep. Hatch designated Rep. Bershtein as an alternate for Rep. McGuire and designated Rep. Fontneau as an alternate for Sen. Watters.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-68 on the following grounds:

- Amend Jus 603.03 by inserting “60 days” in place of “120 days”;
- Amend Jus 604.04(a) by inserting “revised 8/23/2019” immediately after the form name;
- Amend Jus 604.08 by inserting a new paragraph (c) to read as follows:

“(c) By his or her signature on the ‘Mental Health Assessment and Treatment Plan Form’, effective 1/14/19, the provider shall agree to the following:

1. *I am a licensed therapist who is experienced in working with the victims of trauma;*
2. *Under the laws and rules applicable to the Commission, that the Victims’ Compensation Program is the payer of last resort and all private insurance and/or federal or state funding, including Medicaid and Medicare, must be billed first;*
3. *I will accept the NH Victims’ Compensation Program’s reimbursement of \$75 for an individual, crime-related, therapy session and \$35 for a group, crime-related, therapy session as payment in full;*
4. *I understand that I may only bill the Victims’ Compensation Program for crime-related therapy.*
5. *I will request any necessary extension of treatment 30 days prior to the end of all Commission approved sessions.”;*

- Renumber Jus 604.08(c)-(f) as (d)-(g); and
- Amend Jus 600 in response to the editorial comments made by Committee staff to Final Proposal 2019-68.

Sen. Dietsch seconded.

Adopted.

8. After a break, with Reps. Hatch, Schmidt, Williams, Hoelzel, Lang, Fontneau, and Karrick, and Sens. Reagan, Dietsch, Kahn, and Ward present, the Committee discussed Final Proposal 2019-102 from the Department of Environmental Services (Drinking Water Programs, Administrative Procedures for Grants and Loans from the Drinking Water and Groundwater Trust Fund). Gretchen Hamel and Johnna McKenna testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated October 14, 2019.

Rep. Bershtein returned to the meeting during the discussion of this item.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-102 based on the request.

Rep. Schmidt seconded.

Adopted.

9. The Committee discussed Final Proposal 2019-88 from the Department of Safety (Commissioner, Various N.H. Vehicle Registration Rules). David Hiltz and Christopher Ialuna testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2019-88.

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2019-29 from the Department of Safety. (Commissioner, Voluntary Certification of Fire Protection Equipment Technicians). David Hiltz testified for the Department.

The Department had submitted a conditional approval request in amended rules dated October 10, 2019, but the Department had withdrawn the request.

Sen. Kahn moved that the Committee approve Proposed Interim Rule INT 2019-29 with the understanding that the Department would address in a regular rulemaking proceeding the issues outlined in the annotations by Committee staff to the Proposed Interim Rule.

Sen. Reagan seconded.

Adopted.

11. The Committee discussed an emergency rule (Document #12894) from the Department of Safety (Commissioner, Substance Abuse Grant Program Emergency Rule). David Hiltz testified for the Department.

It was the consensus of the Committee to take no further action.

12. The Committee discussed Final Proposal 2019-100 from the Department of Health and Human Services (Former Division of Public Health Services, Rules for Residential Treatment and Rehabilitation Facilities). Allyson Zinno, Doreen Shockley, and Kenneth Walsh testified for the Department.

Sen. Dietsch and Rep. Lang left the meeting during the discussion of this item. Rep. Hatch designated Rep. Karrick as an alternate for Sen. Dietsch.

Sen. Kahn left the meeting at this time.

It was the consensus of the Committee to postpone action on this item to the continued meeting on November 7, 2019.

13. The Committee discussed whether to postpone the remainder of the agenda as follows to the continued meeting on November 7, 2019:

11. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- | | |
|-----------------|--|
| (b) FP 2019-108 | Former Division of Public Health Services
Rules for Ambulatory Surgical Centers
(JLCAR Deadline November 12, 2019. Former interim rules expired
December 24, 2018.) |
|-----------------|--|

- (c) FP 2019-121 Former Division of Mental Health and Developmental Services
Certification Standards for Behavioral Health Community Residences
(JLCAR Deadline November 18, 2019. Former interim rules expired
September 6, 2019.)

12. BOARD OF ACCOUNTANCY

- FP 2019-107 Application for Initial Certification, Reciprocity, and Return to Active Practice
(JLCAR Deadline October 17, 2019.)
(Formerly Item #8 on 9-20-19 Agenda.)

13. BOARD OF PSYCHOLOGISTS

- FP 2019-110 Petition for Waiver
(JLCAR Deadline October 24, 2019.)

14. BOARD OF MEDICINE

- FP 2019-46 Licensure Requirements, Renewal Requirements, Ethical Standards, and Physician
Assistant Rules
(JLCAR Deadline November 12, 2019.)

15. REAL ESTATE COMMISSION

- FP 2019-67 Amendments to Organizational Rules, Practice and Procedural Rules, Licensing
Requirements, and Continued Status
(JLCAR Deadline November 18, 2019.)

16. PHARMACY BOARD

- (a) OR 2019-33 Registered and Certified Pharmacy Technician Duties
(JLCAR Deadline December 2, 2019.)
- (b) FP 2019-72 Investigations
(JLCAR Deadline November 14, 2019.)
- (c) FP 2019-74 Inspections
(JLCAR Deadline November 14, 2019.)

17. ELECTRICIANS' BOARD

- FP 2019-94 Apprentice Qualifications
(JLCAR Deadline November 18, 2019.)

18. GOVERNING BOARD OF PHYSICAL THERAPISTS

- FP 2019-99 Ethical Standards
(JLCAR Deadline November 7, 2019.)

19. BOARD OF NURSING

OR 2019-71

Alternative Recovery Monitoring Program

(JLCAR Deadline December 19, 2019.)

(Response not yet filed. Response due by November 4, 2019).

OTHER BUSINESS

20.

14. Before postponing the items, the Committee discussed Final Proposal 2019-107 from the Board of Accountancy (Application for Initial Certification, Reciprocity, and Return to Active Practice), because the Committee's deadline pursuant to RSA 541-A:13, I for action on this Final Proposal was October 17, 2019.

Sen. Reagan moved that the Committee request a waiver from the Director of the Office of Legislative Services of the Committee's October 17, 2019 deadline.

Rep. Schmidt seconded.

Adopted.

15. The Committee discussed Final Proposal 2019-110 from the Board of Psychologists (Petition for Waiver) because the Board had submitted a conditional approval request in a memo and amended rules dated October 14, 2010.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-110 based on the conditional approval request.

Rep. Fontneau seconded.

Adopted.

16. With the exception of Final Proposal 2019-110, the Committee postponed by consensus the agenda from Items #11(b) to #20 to the continued meeting on November 7, 2019.

17. The Committee recessed by consensus at 12:25 p.m.

Docket of SJR1

[Docket Abbreviations](#)

Bill Title: prohibiting the implementation of certain rules of the board of education.

Official Docket of SJR1.:

Date	Body	Description
2/6/2020	S	Sen. Feltes Moved Introduction; MA, VV; 02/06/2020; SJ 3
2/6/2020	S	Sen. Kahn Moved Ought to Pass; 02/06/2020; SJ 3
2/6/2020	S	Ought to Pass: RC 15Y-8N, MA; OT3rdg; 02/06/2020; SJ 3
3/2/2020	H	Introduced 02/20/2020 and referred to Education
3/11/2020	H	==CANCELLED== Public Hearing: 03/17/2020 10:00 am LOB 207
6/3/2020	H	Public Hearing: 06/09/2020 01:00 pm Members of the public may attend using this link: https://www.zoom.us/j/99271793737
6/30/2020	H	Vacated and Laid on Table MA VV 06/30/2020 HJ 10 P. 3
9/23/2020	H	Died on Table

NH House

NH Senate

SJR 1 - AS INTRODUCED

2020 SESSION

20-3086

10/05

SENATE JOINT RESOLUTION ***1***

A RESOLUTION prohibiting the implementation of certain rules of the board of education.

SPONSORS: Sen. Kahn, Dist 10; Sen. Fuller Clark, Dist 21; Sen. Watters, Dist 4; Rep.
Luneau, Merr. 10

COMMITTEE: [committee]

ANALYSIS

This joint resolution prohibits the implementation of rules of the board of education contained in Final Proposal 2019-5.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

A RESOLUTION prohibiting the implementation of certain rules of the board of education.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Whereas, the New Hampshire board of education (board) proposed rules in Final Proposal 2109-
2 5 containing rules Ed 1400 relating to the Learn Everywhere Program for high school graduation
3 credit; and

4 Whereas, on October 17, 2019, the joint legislative committee on administrative rules
5 (committee) voted, pursuant to RSA 541-A:13, V(f), to enter a final objection to Final Proposal 2019-5
6 as amended in the Objection Response of the board of education; and

7 Whereas, the committee objected that Ed 1407.02(a) was, pursuant to committee rules 402.02(a)
8 and 402.01(b), contrary to legislative intent, respectively, by violating the specific statute RSA 193-
9 E:2-a, V(a) and the more general statutory purpose clause RSA 193-E:1, II; and

10 Whereas, the committee concluded that the statutory intent of both RSA 193-E:1, II and RSA
11 193-E:2-a, V(a) was to create a system of separate authority where the board mandates the
12 minimum standards for graduation, and the local school districts maintain the specific curriculum
13 which dictates the credit needed for those minimum standards for graduation. The proposed rule Ed
14 1407.02(a), in requiring a school district to accept completion certificates for up to 1/3 of graduation
15 credits from a Learn Everywhere Program, violates the statutes because it requires the school
16 district to grant credit for curriculum it has not approved; and

17 Whereas, the committee objected that Ed 1400 as a whole, pursuant to committee rule 402.01(c),
18 was contrary to legislative intent to the extent that Ed 1400 violates the overall purpose of RSA 193-
19 E because the statute delegates to school districts the responsibility for the specific curriculum for
20 which credit is granted; and

21 Whereas, the committee objected that Ed 1407.02(a) was, pursuant to committee rule 401.01(c),
22 beyond the board's authority because RSA 193-E:2-a, V(b) does not give the board authority to
23 require a school district to grant credit for programs or courses when the school district did not itself
24 approve the curriculum; and

25 Whereas, on October 17, 2019 the introduction of a joint resolution was entered; now, therefore,
26 be it

27 Resolved by the Senate and House of Representatives in General Court convened:

28 That the general court of the state of New Hampshire hereby prohibits the board of education
29 from adopting Ed 1400 as contained in Objection Response 2019-5; and

30 That the general court shall clarify RSA 193-E by legislation that (1) the rulemaking authority of
31 the board of education in RSA 193-E:2-a, V(b) does or does not give the board authority to require

SJR 1 - AS INTRODUCED

- Page 2 -

1 that school districts grant credit for courses or programs when the district did not itself approve the
2 curriculum and (2) that RSA 193-E:2-a, V(b) therefore does or does not authorize the board to require
3 a school district to accept the credit if it chose not to.