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Drew Cline, Chairman
New Hampshire State Board of Education
101 Pleasant Street
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Dear Chairman Cline,

On July 19, 2019, the Joint Legislative Committee on Administrative Rules (“JLCAR”) held a public hearing on the State Board of Education (“SBOE”) Rule ED 1400 proposal, Learn Everywhere.

In that meeting, JLCAR made a Preliminary Objection to Final Proposal 2019-5. Below is the department’s response to the Preliminary Objection. In responding to this objection, the Board may respond by “withdrawing the rule, by amending the rule to remove the basis for objection, or by making no change.” The department believes an amended rule is the appropriate response and we have provided those amendments to you below and attached.

Of the eight (8) points of objection by JLCAR, the department has proposed changes to the rules that address five (5) of the objections directly. The remaining JLCAR objections, in the opinion of the department, reflect an incorrect understanding on the part of JLCAR as to how credits are granted to students in New Hampshire public schools.

Elaborating more broadly on the perceived misunderstanding of how credits are granted to New Hampshire public school students, JLCAR makes a repeated statement that local curriculum dictates the credit.

- Objection 1. “... the local school districts maintain the specific **curriculum which dictates the credit** ...”
- Objection 2. “... the specific **curriculum for which credit is granted**”
- Objection 3. “require school districts to **grant credit** for programs or courses when the school district did not itself **approve the curriculum**”
- Objection 4. “... the school district must at the same time **approve a curriculum before granting credit**”

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As enumerated below in our response to the specific objections, New Hampshire public school students are awarded credit based on “demonstration of district or graduation competencies” (ED 306.27 (f)). Graduation itself is based not on participation in a particular curriculum, but on “mastery of required graduation competencies.” (ED 306.27 (e))

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

We believe the changes proposed below are responsive to the Preliminary Objection by JLCAR while continuing to maintain the integrity of the ED 1400 rule with fidelity to the full body of the law.

1. **JLCAR 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;

State Board Response:

- 1.1. JLCAR 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 JLCAR 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. JLCAR 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 JLCAR has stated. The distinction here is important. In JLCAR’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. **JLCAR 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;

State Board Response:

- 2.1. JLCAR 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 JLCAR 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. JLCAR 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 JLCAR 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 JLCAR 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 JLCAR, which has asserted that Ed 1400 in its entirety is contrary to the legislative intent of RSA 193-E. This overly broad objection prevents the Board from effectively and substantively responding to concerns of JLCAR.
- 2.4. 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. **JLCAR 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;

State Board Response:

- 3.1. JLCAR 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))

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- 3.1.2. RSA 193-H:1-a, V further contradicts the objection by JLCAR 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. JLCAR 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 JLCAR 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. **JLCAR 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;

State Board Response:

- 4.1. JLCAR 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. JLCAR 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. **JLCAR 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;

State Board Response:

- 5.1. JLCAR 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.

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- 5.2. JLCAR 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 JLCAR 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. **JLCAR 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;

State 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. **JLCAR 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

State Board Response:

- 7.1. JLCAR 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

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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. **JLCAR 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.

State 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).

* * * * *

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

Sincerely,



Frank Edelblut
Commissioner of Education