



**Reaching Higher NH Analysis of  
Office of Legislative Services (OLS) Feedback on  
ED 306 Initial Proposal Dated February 15, 2024**

Prepared on Thursday, May 16, 2024

- **Weakening requirements for curriculum and programs:** The NHED proposed to remove requirements for curriculum and programs and would make them optional by shifting language from “shall” to “may”.
  - “Throughout this proposal substantive requirements have been amended to be options as opposed to requirements. By changing the language requirements to ‘may’ it has created ambiguity in these rules...” (page 33 of [PDF 2](#))
- **Elimination of required courses:** The NHED proposed eliminating the requirement that school districts offer a specific number of courses in the stated subject areas, and replacing it with the requirement that school boards offer the opportunity for students to demonstrate competency in the content area.
  - “Since the state will no longer require in ED 306.21 that a minimum number of courses in program areas be offered by the school district, is the intent of the state to specify only the minimum number of graduation credits required in the program areas listed...?” (page 37 of [PDF 1](#))
  - “For example, the former Table 306-1 had required 3 courses be offered on arts education, but the new table requires only ½ credit in arts education to graduate. So may a school district now offer less arts education so long as the student can earn ½ credit? Is there a fiscal benefit to the school district by this apparent reduction in art courses?” (page 37 of [PDF 1](#))
  - “Does this mean there will no longer be a state minimum number in each program area but instead be left to each school district to decide? Based on what? This would seem to create the same potential bases for objection as with the elimination of [class size requirements].” (page 32 of [PDF 1](#))
  - The deletions [in this section] compound the potential problem of an inadequate education... The specific details for what [science] shall cover have been deleted. This apparently leaves each school district to decide what these areas will include. This will also lead to inconsistent standards across the state.” (page 24 of [PDF 2](#))
- **Class size requirements:** The NHED proposed to remove maximum class sizes, which the state attorney flagged as being “very broad,” contrary to the state’s obligation to offer a constitutionally adequate education, and noting that it would have fiscal implications, and could not be uniformly enforced.

- “[T]his allows different school boards to have different ratios of students-educators. How does this affect the calculation of the annual per-pupil cost and budgeting?” (page 16 of [PDF 1](#))
- **Alternative courses of study:** The NHED proposed to change the definition of “alternative courses of study” to a more broad definition, and would require the school district to pay for the alternative if a student chose to pursue it. The state attorney questioned if the definition would now be so broad that *any* “learning opportunity” that a student chose would have to be funded by the local school district.
  - The new definition “implies that all learning opportunities may now be an alternative course of study.” (page 19 of [PDF 1](#))
  - “This rule requires the school to provide equipment, software, and internet connectivity to students... Now the rule requires that the school pay for these things when a student takes an alternative course of study... Because of this, it is unclear whether this means that, if the school district wants to offer remote learning or an alternative course, it must pay for it and pay for the student’s internet access.” (page 33 of [PDF 1](#))
- **Graduation “expectations:”** The NHED proposed to implement a set of “graduation expectations,” which are 23 statements that would be areas in which students would have to demonstrate “their ability to apply and transfer their learning.”
  - “Is this the same as “graduation requirements”? Expectations are not equivalent to requirements. Expectations are aspirational. It is unclear why the agency is using this term.” (page 34 of [PDF 1](#))
- **Replacing “courses” with “learning opportunities:”** The NHED proposed to remove “courses” throughout the document and replace the term with “learning opportunities,” which is a vague term that is undefined in the rules. The state attorney found multiple instances where the terms were used inconsistently.
  - “Are “learning opportunities” the same as “courses”? If so, why has the word “courses” been kept in some areas of the rule? (page 28 of [PDF 1](#))
  - “Are learning opportunities the same as courses and is that the same as “course of study”? The rule does not use these terms consistently.” (page 31 of [PDF 1](#))
- **Removing requirements for the teaching of required subjects:** The NHED proposed removing the requirement that local school boards offer a program of studies that teaches students through educational experiences and instructional activities, and replaces it with the requirement that students demonstrate proficiency in the required subjects. The state attorney questioned if that adhered to legislative intent.
  - “The rule no longer requires local school boards to have these as a program of studies, rather it requires that the school board make the student demonstrate proficiency in these areas. That is different than requiring the subject matters be taught and this probably does not adhere to legislative intent.” (page 29 of [PDF 1](#))
- **Meeting instructional needs of students:** The NHED proposed removing the requirement that school boards adopt policies requiring that schools meet the instructional needs of each individual student, which the staff attorney questioned.

- “The local school board no longer needs to develop a policy around meeting the instructional needs of students?” (page 5 of [PDF 1](#))
- **Competency:** The NHED proposed changing the definition of “competency,” which the staff attorney noted was unclear and changed the intent from what a student must be taught to what a student must learn.
  - “The change in definition here shifts the idea of competency from what the student must be taught to what the student must learn.” (page 1 of [PDF 1](#))
  - “Competencies usually mean an array of knowledge, skills and abilities that are required to achieve proficiency in particular subjects. It is unclear why it is not being defined that way. The new definition makes other definitions and sections of the rule unclear. (e) says ‘measured by the student’s ability to demonstrate proficiency in required competencies’ but the definition says it is knowledge and skill that the student ‘will be able to apply.’ These two don’t seem to make sense together.” (page 1 of [PDF 1](#))
  - “Why is this not being defined as it is commonly used in education?” (page 1 of [PDF 1](#))
- **Statistical Reports, Accountability, and Assessment:** The NHED proposed removing two sections of the rules regarding academic testing and reporting, as well as gutted the assessment requirements in the program elements, which the state attorney flagged as contrary to legislative intent and in conflict with existing laws.
  - “There are no rules on this determination, and it is unclear whether “timely manner” is determined [on a] case-by-case basis by the Commissioner for each school district...” (page 21 of [PDF 1](#))
  - “The proposal deletes... examples of what required assessment... shall include. (page 3 of [PDF 2](#))
  - “The deletion may lead to inconsistent standards statewide.” (page 3 of [PDF 2](#))
  - “What are the assessments? How are they “recognized and designated” by the department? ... This also appears to a delegation of the Boards rulemaking authority because the Board is delegating its authority instead of specifying the criteria for the department to apply. This would be a violation of RSA 541-A:22, III(e).” (page 4 of [PDF 2](#))
  - “Again, the requirements surrounding assessments are being deleted. Not having any examples means that it’s unknown what would actually be consider[ed] OK and what wouldn’t be OK. this will lead to inconsistent standards.” (sic) (page 11 of [PDF 2](#))
  - “It is unclear what the intent is by these deletions except perhaps that [like rules earlier in the section], the Board will rely on statutory assessment requirements alone. This will lead to inconsistent standards and it means that no one has any idea what standards are acceptable and which are not.” (page 12 of [PDF 2](#))
- **Developmentally appropriate:** The NHED used “developmentally appropriate” throughout the document, which needs to be defined in order to be uniformly applied, according to the state attorney.
  - “This term needs to be defined. Also, there are rules in the proposal in which “developmentally” has been deleted but other areas in which it hasn’t been. It is

unclear why some subjects require developmentally appropriate techniques and others do not.” (page 1 of [PDF 2](#) and referenced throughout [PDF 2](#))

**Documents released by the Office of Legislative Services (OLS)**

- PDF 1:  
<https://reachinghighernh.org/wp-content/uploads/2024/05/2024-41-IP-Rule-Ed-306.01-Ed-306-CM-w-MM-comments-2-KR-v3-FINAL.pdf>
- PDF 2:  
<https://reachinghighernh.org/wp-content/uploads/2024/05/2024-42-IP-Rule-Ed-306.31-Ed-306-CM-w-MM-KR-MM-v2-FINAL.pdf>

*For questions about this document, please contact Christina Pretorius, Policy Director, at [christina@reachinghighernh.org](mailto:christina@reachinghighernh.org)*