



For Immediate Release
October 17, 2023

NH News Organizations Request Release of Education Reform Records

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More than two dozen of the state's leading news organizations requested today that the New Hampshire Department of Education make public all records of the special task force charged with recommending broad revisions to the rules that will govern public education in the state for at least the next decade.

The news organizations contend the education reform task force - created as a result of a sole source contract with the National Center for Competency-Based Learning approved by the governor and Executive Council - is a quasi-governmental body and therefore subject to New Hampshire's right to know law, RSA 91-A.

Since its inception more than two years ago, the 13-member task force has been conducting business, yet there is no public record of its meetings, votes or minutes, as required by RSA 91-A.

Specifically, the law stipulates that public bodies must conduct meetings open to the public, that "minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions", and that "minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting," and "shall be treated as permanent records of any public body, or any subordinate body thereof, without exception."

This letter requesting public disclosure was made by the Granite State News Collaborative, the New Hampshire Press Association, and the New England First Amendment Coalition.

Background:

In November 2020, as recommended by Education Commissioner Frank Edelblut, the Governor and Executive Council approved a \$50,000 sole-source contract with the National Center for Competency-Based Learning “to facilitate a revision of the ED 306 Minimum Standards Administrative Rules.” The NCCBL is a Durham-based company led by former New Hampshire Board of Education Chair Fred Bramante.

In January 2021, the NCCBL created a 13-member self-described “task force” that set out “to enhance and further embed competency-based learning within the Minimum Standards,” according to a June 23, 2022 letter the task force sent to state educational leaders.

The ED 306 Minimum Standards Administrative Rules were established as part of the Joint Legislative Committee on Administrative Rules (JLCAR) created in 1983 by the legislature to provide legislative oversight of administrative rulemaking by the agencies of the executive branch.

The news organizations contend that because the contract with NCCBL was approved by the Governor and Executive Council and its responsibilities are a derivative of the legislature’s oversight functions affecting public policy, the task force is a quasi-public body and therefore subject to all provisions of the state’s right to know law, RSA 91-A.

The news organizations also cited *Bradbury v. Shaw*, 116 N.H. 388 (1976), a case heard before the New Hampshire Supreme Court concerning the application of RSA 91-A:1 to a private committee. The court upheld the trial court’s finding that heavy involvement in governmental functions renders a private committee a public body and subject to the right to know law.

A copy of the letter follows.

SENT VIA EMAIL AND U.S. POSTAL SERVICE

Commissioner Frank Edelblut
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Chair Rep. Carol McGuire
Vice Chair Sen. Timothy Lang
Joint Legislative Committee on Administrative Rules Office of Legislative Services
Administrative Rules
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Re: ED 306 Educational Reforms Special Committee and NH RSA 91-A.

October 17, 2023

Dear Commissioner Edelblut, Rep. McGuire, Sen. Lang and Mr. Bramante,

Our organizations believe the 13-member committee formed by the National Center for Competency-Based Learning (NCCBL) under the direction of the Department of Education “to facilitate a revision of the ED 306 Minimum Standards Administrative Rules” is subject to New Hampshire's right to know law, RSA 91-A.

We call your attention to RSA 91-A:1-a Definitions VI. (a) which defines a "public body " as the “The general court including executive sessions of committees; and including **any advisory committee** established by the general court.” (emphasis added).

The ED 306 Minimum Standards Administrative Rules are part of the Joint Legislative Committee on Administrative Rules which was established in 1983 by the state legislature to provide legislative oversight in the area of administrative rulemaking by the agencies of the executive branch.

Section (b) further defines a public body as “the executive council and the governor with the executive council; including **any advisory committee established by the governor by executive order or by the executive council.**” (emphasis added).

In November 2020, on the recommendation of Commissioner of Education Frank Edelblut, the governor and Executive Council approved a \$50,000 sole source contract to the National Center for Competency-Based Learning “to facilitate and conduct planning and task force meetings over the course of the year in order to update, revise, and enhance the ED 306 Minimum Standards Administrative Rules. The final work product that will result from this contract will be a revised version of the Administrative Rules to be presented to the State Board of Education and the Joint Legislative Committee on Administrative Rules (JLCAR).”

In addition, we point to *Bradbury v. Shaw*, 116 N.H. 388 (1976), a case heard before the New Hampshire Supreme Court in 1976 concerning the application of RSA 91-A:1 to a private committee. The court upheld the trial court's finding that heavy involvement in governmental functions renders a private committee a public body and subject to the right to know law. To underscore the depth of the NCCBL's involvement in governmental functions we point to Bramante's personal page on the center's website where he states: “Today, NCCBL, under Fred's leadership, is leading the New Hampshire Department of Education's effort to revamp its K-12

regulations. Additionally, NCCBL is coordinating an effort along with the NH School Administrators to 'Redefine' what it means to be 'Ready' to successfully complete high school with a new vision that says 'by 2025, virtually every New Hampshire high school student will earn, or be on a personalized path to earning, a post-secondary or career related credential'."

RSA 91-A:1 is also precise in the requirements of a public body's legal obligations to hold open meetings, advertise those meetings in advance and publish minutes of those meetings. Specifically:

“Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings.”

We have been unable to find any public record documenting the meetings of the education reform committee chaired by Bramante since its contract was approved by the Executive Council in November 2020. We are also unable to locate any meeting minutes, records of votes or attendance listings, as prescribed by RSA 91-A.

Our organizations are asking that such information be made public immediately. This includes all records relating to every time the education reform committee has met since September 2020, including but not limited to, the times and places of all meetings, the agendas for each of those meetings, the attendance records, the minutes of those meetings to include the decisions and votes made at those meetings as well as an accounting of all executive sessions, the minutes of those sessions and any decisions made during those sessions.

In addition to this information being provided, we expect the committee will conduct its business in full compliance with RSA 91-A:3 moving forward.

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