



# HB 620 Analysis

# Reaching Higher NH: A Public Education Policy Resource

## What we do

Track, report on, and explain public education legislation in a way that stakeholders can understand and use to make informed decisions.



Convene and work with parents, students, educators, and business and community leaders to gather stories, different points of view, and information to share with the Granite State community.



Prepare and deliver issue briefs on critical topics in education.



Support local innovation through special projects in communities throughout NH.



Reaching Higher NH is a nonpartisan public education policy resource for New Hampshire families, educators, and elected officials.

Our mission is to support high quality public education for every student in New Hampshire.

We provide resources and analysis to help raise public awareness and engagement around efforts to bring together communities and create opportunities to develop and/or support the following:

- 21<sup>st</sup> century skills;
- Diminish dropout rates;
- Encourage the development of personalized career pathways; and,
- Reduce reliance on high stakes testing and expand innovative, locally-driven models of instruction and assessment.



## HB 620

Relative to compliance with  
state and federal education  
mandates

# HB 620

**HB 620 significantly restricts the ability of the New Hampshire State Board of Education (state board) to propose rules that exceed the minimum requirements of state or federal law.**

[HB 620](#) has two main provisions amending [RSA 186:6](#):

1. The state board shall not propose rules that require a school district or school to expand or modify activities to implement a curriculum, method of instruction, or statewide assessment program that necessitate additional expenditures from local revenues.
2. The state board shall not propose a rule pursuant to RSA 541-A that exceeds the minimum requirements of state or federal law. Proposed rules designed to implement federal law may exceed the minimum requirements of federal law only if, and to the extent that, state statute explicitly authorizes the state board to exceed the minimum requirements of federal law.

The intent of HB 620 is to prevent unfunded mandates (i.e., school districts having to spend local money on meeting requirements set by the state board) and to provide greater flexibility and autonomy to school districts and schools.

The **actual impact of the bill**, however, could be to significantly and negatively impact families and students, particularly students with disabilities. The bill does not make any exceptions to allow the state board to propose rules that make it easier for students and families to receive vital services, such as an existing rule that requires special education evaluations be performed by a licensed or certified person.



# What are “Rules”?

Rules are one of the three main categories of mandates that govern education in New Hampshire (and the US in general).

1. Statute – this is the law (local, state, or federal) enacted through the legislative process (e.g., The Elementary and Secondary Education Act of 1965 is a federal law that was passed by Congress and signed into law by the President).
1. Rules – also known as “regulations” are directives issued by agencies (e.g., NH State Board of Education) and meant to support the effective implementation of statute (i.e., rules must always, in some way, tie back to a law).
  - The public has a chance to provide input during the rulemaking process.
  - Rules typically have the force and effect of laws.
2. Policies – these are provisions adopted by the local school district (i.e., school board, superintendent, or board of trustees) or school; these typically do not have the force of law and may or may not require public input.



HB 620 affects the **Rulemaking** process for the NH State Board of Education (Note: the NH Department of Education is not authorized to issue rules, this authority is left to the State board of Education.)



## The NH Rulemaking Process

### Proposal

The state board works with a the range of stakeholders (e.g., parents, educators, policy-makers, community groups) and proposes a rule

### Public Comment

The public provides comments on the proposal via written comments and at least one public hearing

The state board works with all stakeholders to responds to public comments and posts a final rule

### JLCAR Review

The joint Legislative Committee on Administrative Rules (JLCAR) reviews the proposal

The JLCAR reviews for compliance with statute and can object, amend, or approve a proposal

### JLCAR Approval

After JLCAR approves, the agency adopts the rule (and it goes into effect)



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# What is the purpose of Rules?

Rules fill in the gaps left in statute. Lawmakers (at every level) often set broad guidance and then leave it up to agencies as to HOW the law will be implemented.

As an example, NH law requires that the state board establish and promote an educational program for adults to earn a high school diploma or its equivalent.

The NH state board then published rules that clarify:

1. What are the responsibilities of local school boards to deliver such a program?
2. What are the responsibilities of the Department of Education?
3. What are the eligibility requirements?

Lawmakers do NOT implement the law, agencies implement the law. Agencies use rules to provide the public with a clear and transparent understanding of HOW the agency intends to implement the law. Rules also hold agencies accountable to the public by ensuring the agencies commit to detailed plans for how they will implement laws.

The legislature currently has final approval over all administrative rules – the Joint Legislative Committee on Administrative Rules (JLCAR) reviews all proposed rules to ensure that they comply with the law.

For more information on New Hampshire's Rulemaking process, please see [chapter 541-A of NH law](#) or the Administrative Rules website of the [Office of Legislative Services](#).



# What does it mean to exceed the minimum requirements of state or federal law?

Currently, the NH Department of Education uses the following definition for “exceeds”: “Any rule, which on its face, surpasses an explicit requirement of the current state statute or federal law.” ([NH Rules in Excess Chart](#))

This definition is used to comply with an existing NH law that requires the Department of Education to issue an annual report identifying any special education rules that exceed minimum requirements.

This is an area of confusion. It is not always clear what rules “exceed” minimum requirements. HB 620 would exacerbate this confusion. HB 620 could make it harder to propose rules that clarify state or federal law as such rules could be found to “exceed” and thus would not be approved by JLCAR. HB 620 does not provide the necessary clarification or details to prevent such problems.



HB 620 would restrict the state board’s ability to propose rules in all circumstances - for our analysis we will focus on how HB 620 would affect students with disabilities as this is an area where the bill’s impact could be severe

# Concerns with HB 620's impact on Students With Disabilities

HB 620 is overly broad in its mandate. It would eliminate the state board's ability to propose rules in many situations where such rules are critical to providing parents and students access to vital services. This is particularly true for students with disabilities.

Here are several examples of existing NH rules that could be quickly eliminated if HB 620 passed:

1. Requirement that a school district must respond to a parent's request for an Individual Education Plan meeting within **21 days** (the law does not provide a specific timeline).
2. Requirement that a parent sign off on **every** IEP (The law only requires parental signature on the first IEP. Subsequent, changed, IEPs would go into effect unless the parent or guardian took steps to disagree).
3. Requirement for a minimum of **10-day** notice be provided to parents before an IEP meeting (the law only requires notification "early enough to ensure that [parents] will have an opportunity to attend.")
4. Requirement that a school district provide parents with **14 days** to respond to a school district's proposal (the law only requires that parents be given a "reasonable time" to consider before the school district implements its proposal).
5. Requirement that a school district **provide parents access** to test results and other relevant educational records, if requested, 5 days prior to the IEP meeting (law does not have such a requirement).
6. Requirement for a **criminal records check** for all school employees, school volunteers, and educational surrogate parents (the law does not have such a requirement).
7. Requirement that a school districts maintain written evidence **documenting implementation of the IEP** (the law does not have such a requirement).
8. Requirement that only qualified examiners who are **certified or licensed** can conduct evaluations to determine that a child has a disability (the law only requires that such examiners be "trained and knowledgeable").

*Note: the law referenced on this slide is the federal Individual with Disabilities Education Act (more [here](#)).*

# Conclusion

HB 620 is unnecessarily broad in how it restricts the state board's ability to propose rules.

- It would exacerbate existing confusion around what “exceeds” minimum requirements
- It would disrupt existing procedures that protect parents and students
- It would complicate parents' efforts to ensure that students with disabilities receive the services needed to thrive at school and in a career
- It would upend an existing process that successfully brings together all stakeholders to craft rules that are vital to supporting students and families

The bill requires significant revision in order to mitigate the unintended consequences listed above and described on the previous slide.








# Questions?

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