

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

DOCKET NO. 2022-0087

GRANITE STATE TRADE SCHOOL, LLC

v.

STATE OF NEW HAMPSHIRE MECHANICAL LICENSING BOARD

(Superior Docket No. 217-2021-CV-00218)

**RULE 7 APPEAL OF FINAL DECISION OF
THE MERRIMACK COUNTY SUPERIOR COURT**

**REPLY BRIEF OF THE PETITIONER/APPELLANT
GRANITE STATE TRADE SCHOOL, LLC
TO DEFENDANT STATE OF NEW HAMPSHIRE
MECHANICAL LICENSING BOARD'S BRIEF**

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1. The statutory intention of Saf-Mec 610 and 308 Rules are to preserve the integrity and safety of the education and testing process.
2. It is agreed that Oversight is necessary for the public safety, health, peace and welfare.
3. GSTS is the oldest and most secure educational and training facility in the State of New Hampshire.
4. GSTS has never had a breach because all educational and testing data is maintained at the GSTS facility where it was created.
5. The Oversight by the State of New Hampshire is confusing and seems to promote a less secure solution contrary to the legislative intent.
6. GSTS has never refused to allow the State of New Hampshire to review its educational and testing data, some of which are power point presentations. GSTS requested that this be done at its facility, which the State is required to inspect anyway.
7. GSTS has not changed its way of doing business. It is the State that is now asking GSTS to change the status quo and surrender its data even though GSTS training and testing programs were approved prior to Saf-Mec 308.
8. This is where the rules become very arbitrary and capricious as applied: An institution must seek Board approval for any changes in curriculum (rules do not define what constitutes changes in the curriculum); seek board approval for any changes in instructors, teachers or laboratory training providers (this is an issue as a competitor is using an unlicensed Board Secretary for training personnel whom work full time for the Board) as well as this competitor is not required to meet the

rules; seek approval for any changes in the testing or examination questions or procedures.

9. It goes on to state that the auditing process is to be done every two years. Since the process began the Board has not been able to complete the auditing process as evidenced in Board meeting minutes, i.e., that the process is taking too long.
10. The information the Board requests per their rules is too expansive and voluminous for a part time Board to be able to review. The auditing process also requires submittal copies of tests, quizzes, and exams including any and all questions used for licensure or certification, copies of student handbooks, educational materials, and power point presentations that apply to licensing or certification courses offered by the educational provider. They also want any additional supporting materials requested by the board for evaluation. This is the biggest area of the arbitrary and capricious argument of the Board's rules, as all of the previously mentioned items are not related to validation of instruction. GSTS met with the Board who previously agreed to visit and review GSTS materials then the Board reversed its position.
11. GSTS has offered to comply with the biannual Board review but because of the sensitivity of the training and testing materials subject to review, this is logical to maintain security.
12. GSTS asserts that it is complying with the Board rules, preserving security and integrity of the exams and making them available for viewing at GSTS's facility along with all of the other voluminous amounts of requested materials. It is entirely burdensome and costly to effectively provide all of the demanded materials. GSTS's claim is not deeply flawed in the reading of the rule. 308.01 (c)

rules reads, An applicant that wants to have its training program accepted under these rules shall submit to the mechanical licensing board a short statement describing the licensing program or specialty license endorsement program for which the training program is to be evaluated. GSTS has already been accepted and has been for over 10 years, being one of the first approved programs accepted under the establishment of the State requirement for Licensing Fuel Gas workers.

13. In reading Saf-Mec 308.03, Approval (c) The passage of these rules shall not be deemed to discontinue the approval of any training or examination program approved prior to the effective date of these rules.
14. The Mechanical Board rules were not written by the legislature but were written and submitted by the then members of the Mechanical Board when it was under the jurisdiction of the Office of the State Fire Marshall and then submitted to the legislature for approval.
15. The Electrical Board does not require the same arbitrary and capricious submissions of materials as they are not necessary to evaluate a training program. The Electrical Board rules do not intend to confiscate the materials submitted from the training programs and only seeks to review the programs content. The comparison indicates the over reaching and capriciousness of the Mechanical Boards rules.
16. The legislature approved these rules without consideration that they are inconsistent and confusing compared to similar trade licensing approvals in establishing a level playing field by writing rules that are common, fair and equitable. In comparing the Mechanical Boards Rules to the Electricians Boards Rules, we find a wide disparity in the fairness and equality of the rules (Emphasis added).

SUMMARY

GSTS is not arguing the protection of public health and safety, we arguing the flaws in the Rules and the procedural process that is arbitrary and capricious. Respectfully, the Court did not consider this point. If the rules are to be enforced, they need to be fair, equal and consistent with the requirements. The 610 Rules as written are unfair to not only the educational providers but the Mechanical Board itself. The Mechanical Board put these rules in effect in 2017 and did not even attempt to begin the audit process for two full years beginning in late 2019 and into 2020. Comments were made by the Board Chair that “the process is taking too long”. The rules were written before the Board knew the extent of what was involved in this process or the time to conduct the process. Materials have been misplaced from one provider who submitted their materials for evaluation.

The Boards rule request we turn over student information and documentation to the Board in violation of the student's rights to privacy. Public schools cannot release information to parents for some of the materials requested. The best outcome would to declare the 610 rules as poorly written and cause a rewriting of the rules.

Alternatively, review GSTS' educational and testing materials at the GSTS facility. It is not necessary for the State to act as the Safety Officer of proprietary information as their intention to secure same cannot be compared to the security that is already in place by GSTS.

Dated: June 29, 2022

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CERTIFICATION

I, Daniel J. Corley, hereby certify that a copy of the foregoing document and has been filed in accordance with ECF rules to the following parties:

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Dated: June 29, 2022

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