

Committee Report

REGULAR CALENDAR

May 28, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred SB 263,**

**AN ACT relative to anti-discrimination protection for
students in public schools. Having considered the same,
report the same with the recommendation that the bill
OUGHT TO PASS.**

Rep. Charlotte DiLorenzo

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	SB 263
Title:	relative to anti-discrimination protection for students in public schools.
Date:	May 28, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill creates a cause of action for persons injured by discrimination in public schools. This bill came to Judiciary as a second committee after the House adopted the policy. Judiciary considered several alternatives to the remedy section and decided not to alter the language already adopted by the House.

Vote 13-6.

Rep. Charlotte DiLorenzo
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

SB 263, relative to anti-discrimination protection for students in public schools. **MAJORITY: OUGHT TO PASS. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. Charlotte DiLorenzo for the **Majority** of Judiciary. This bill creates a cause of action for persons injured by discrimination in public schools. This bill came to Judiciary as a second committee after the House adopted the policy. Judiciary considered several alternatives to the remedy section and decided not to alter the language already adopted by the House. **Vote 13-6.**

COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: SB 263

TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 5-26-2019 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

This bill creates a cause of action for persons injured by discrimination in public schools. This bill also creates a cause of action for the attorney general in cases of discrimination in public schools. This bill came to Judiciary after the House adopted the policy. Judiciary considered several alternatives to the remedy section and decided not to alter the language already adopted by the House.

COMMITTEE VOTE: 13-6

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Charlaine M. Hoxby
For the Committee

REGULAR CALENDAR

May 28, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Judiciary to which was referred SB 263,

AN ACT relative to anti-discrimination protection for students in public schools. Having considered the same, and being unable to agree with the Majority, report with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Kurt Wuelper

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	SB 263
Title:	relative to anti-discrimination protection for students in public schools.
Date:	May 28, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-2310h

STATEMENT OF INTENT

The minority believes this bill had several issues needing fixes. No standard for the actions creating potential liability; no clarity about who could bring actions under the new law; the potential liability limits; and failure to define the full scope of activities covered. The minority believes that almost all of these issues would be corrected by amendment 2019-2310h.

Rep. Kurt Wuelper
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

SB 263, relative to anti-discrimination protection for students in public schools. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kurt Wuelper for the **Minority** of Judiciary. The minority believes this bill had several issues needing fixes. No standard for the actions creating potential liability; no clarity about who could bring actions under the new law; the potential liability limits; and failure to define the full scope of activities covered. The minority believes that almost all of these issues would be corrected by amendment 2019-2310h.

MINORITY REPORT

COMMITTEE: Judiciary

BILL NUMBER: SB 263

TITLE: _____

DATE: 5-26-2019 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. <u>2310</u>

STATEMENT OF INTENT:

The minority ~~is~~ believes SB 263 had several issues needing fix. No standard for the actions creating potential liability; no clarity about who could bring actions under the new law; the potential liability limits; and failure to define the full scope of activities covered. With ~~all~~ the minority believes that almost all of these ~~amendments~~ issues would ^{be} ~~be~~ corrected by amendment 2310 ~~h~~ which ~~the majority rejected~~.

COMMITTEE VOTE: 13-6

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep. *Kurt DeWulf*
For the Minority

Amendment to SB 263

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
4 section 37 the following new subdivision:

5

Discrimination in Public Schools

6 193:38 Discrimination in Public Schools. No pupil shall be excluded from participation in,
7 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
8 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
9 national origin, all as defined in RSA 354-A. Any pupil claiming to be aggrieved by a discriminatory
10 practice prohibited under this section, may initiate or have initiate on his or her behalf by a parent,
11 guardian, or person having legal custody of the pupil a civil action against a school or school district
12 in superior court for legal or equitable relief, or with the New Hampshire commission for human
13 rights, as provided in RSA 354-A:27-28. The relief for a legal action in superior court shall be for
14 actual damages but shall not exceed the liability limits in RSA 507-B:4.

15 193:39 Discrimination Prevention Policy Required. Each school district and chartered public
16 school shall develop a policy that guides the development and implementation of a coordinated plan
17 to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the
18 basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status,
19 disability, religion, national origin, or any other classes protected under RSA 354-A.

20 2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
21 Amend RSA 354-A by inserting after section 26 the following new subdivision:

22 Opportunity for Public Education Without Discrimination a Civil Right

23 354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No pupil
24 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
25 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
26 status, familial status, disability, religion or national origin, all as defined in this chapter.

27 354-A:28 Procedure on Public School Complaints.

28 I. Any pupil claiming to be aggrieved by a discriminatory practice prohibited under RSA
29 354-A:27 may initiate or have initiated on his or her behalf by a parent, guardian or person having
30 legal custody of the pupil, a civil action in superior court against a school or school district for legal
31 or equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The
32 attorney general may also initiate a complaint with the commission.

Amendment to SB 263

- Page 2 -

1 II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
2 be subject to the procedures outlined in this chapter, with the exception that such complaints may
3 be removed to superior court at any time in compliance with RSA 508:4

4 3 Effective Date. This act shall take effect January 1, 2020.

Amendment to SB 263
- Page 3 -

2019-2310h

AMENDED ANALYSIS

This bill creates a cause of action for pupils injured by discrimination in public schools.

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: May 28, 2019

LOB ROOM: 208

MOTIONS: AMENDMENT

Moved by Rep. Alexander Jr. Seconded by Rep. B. Griffin AM Vote: 7-12

Amendment # 2019-2310h

MOTIONS: RETAINED

Moved by Rep. B. Griffin Seconded by Rep. Alexander Jr. Vote: 7-12

MOTIONS: AMENDMENT

Moved by Rep. Alexander Jr. Seconded by Rep. Kenney AM Vote: 8-11

Amendment # 2019-1982h

MOTIONS: AMENDMENT

Moved by Rep. Alexander Jr. Seconded by Rep. B. Griffin AM Vote: 6-13

Amendment # 2019-2309h

MOTIONS: OUGHT TO PASS

Moved by Rep. DiLorenzo Seconded by Rep. Altschiller Vote: 13-6

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools. 1872

DATE: 5-26-2019
28

LOB ROOM: 208

Alexander Griffin 7-12 2310

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ #2
- Interim Study (2nd year) (if offered)

Moved by Rep. Griffin Seconded by Rep. Alexander Vote: 7-12

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # 1982 #3
- Interim Study (2nd year) (if offered)

Moved by Rep. Alexander Seconded by Rep. Kenney Vote: 8-11

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # 2309 #4
- Interim Study (2nd year) (if offered)

Moved by Rep. Alexander Seconded by Rep. Griffin Vote: 6-13

~~CONSENT CALENDAR: YES NO~~

~~Minority Report? Yes No If yes, author, Rep: Motion~~

Respectfully submitted: _____

Rep Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

2062 #15

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 5-26-19

LOB ROOM: 208

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. Dilorenzo Seconded by Rep. ALTSchiller Vote: 13-6

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES NO

#3019-2310w

Minority Report? Yes _____ No If yes, author, Rep: Wuelper Motion OTPA

Respectfully submitted: Kurt Wuelper
Rep Kurt Wuelper, Clerk

OFFICE OF THE HOUSE CLERK



1/14/2019 3:22:32 PM
 Roll Call Committee Registers
 Report

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2019 SESSION

Judiciary

Bill #: SB263 Motion: RETAIN MF AM #: _____ Exec Session Date: 5-26-2019

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Marjorie K. Chairman		12	
Keans, Sandra B. Vice Chairman		1	
Berch, Paul S.		2	
Horrigan, Timothy O.		3	
Woodbury, David		4	
Altschiller, Debra		5	
DiLorenzo, Charlotte I.		6	
Burroughs, Anita D.		7	
Chase, Wendy		8	
Kenney, Cam E.		9	
Langley, Diane M.		10	
Stevens, Deb		11	
Hopper, Gary S.	1		
Sylvia, Michael J.	2		
Muelper, Kurt F. Clerk	3		
Gordon, Edward M.	4		
Sanvrin, Jason A.	<hr/>		
Griffin, Barbara J.	5		
McLean, Mark	6		
Alexander, Joe H.	7		
TOTAL VOTE:	7	12	

OFFICE OF THE HOUSE CLERK



1/14/2019 3:22:32 PM #3
 Roll Call Committee Registers
 Report

2019 SESSION

Judiciary

Bill #: SB263 Motion: Adopt AM #: 1982 Exec Session Date: 5-26-2019 AF3

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Marjorie K. Chairman	8	7	
Keans, Sandra B. Vice Chairman		1	
Berch, Paul S.		2	
Horrigan, Timothy O.		3	
Woodbury, David		4	
Altschiller, Debra		5	
DiLorenzo, Charlotte I.		6	
Burroughs, Anita D.		7	
Chase, Wendy	1		
Kenney, Cam E.	2		
Langley, Diane M.		8	
Stevens, Deb		9	
Hopper, Gary S.	3		
Sylvia, Michael J.		10	
Muelper, Kurt F. Clerk	4		
Gordon, Edward M.	5	7	
Hanvrin, Jason A.			
Griffin, Barbara J.	6		
McLean, Mark		11	
Alexander, Joe H.	7		
TOTAL VOTE:	8	11	



2019 SESSION

#4

Judiciary

Bill #: SA263 Motion: Adopt AM #: 2309h^{AF} Exec Session Date: _____

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Marjorie K. Chairman		13	
Keans, Sandra B. Vice Chairman		1	
Berch, Paul S.		2	
Horrigan, Timothy O.		3	
Woodbury, David		4	
Altschiller, Debra		5	
DiLorenzo, Charlotte I.		6	
Burroughs, Anita D.		7	
Chase, Wendy		8	
Kenney, Cam E.		9	
Langley, Diane M.		10	
Stevens, Deb		11	
Hopper, Gary S.	1		
Sylvia, Michael J.	2		
Muelper, Kurt F. Clerk	3		
Gordon, Edward M.	4		
Janvrin, Jason A.			
Griffin, Barbara J.	5		
McLean, Mark		12	
Alexander, Joe H.	6		
TOTAL VOTE:	6	-13	



1/14/2019 3:22:32 PM
 Roll Call Committee Registers
 Report

2019 SESSION

Judiciary

Bill #: SB263 Motion: OTP/A^{MA} AM #: — Exec Session Date: 5-26-2019

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Marjorie K. Chairman	13		
Keans, Sandra B. Vice Chairman	1		
Berch, Paul S.	2		
Lorrigan, Timothy O.	3		
Woodbury, David	4		
Altschiller, Debra	5		
DiLorenzo, Charlotte I.	6		
Burroughs, Anita D.	7		
Chase, Wendy	8		
Kenney, Cam E.	9		
Langley, Diane M.	10		
Stevens, Deb	11		
Hopper, Gary S.		1	
Sylvia, Michael J.		2	
Muelper, Kurt F. Clerk		3	
Gordon, Edward M.		4	
Manvrin, Jason A.			
Griffin, Barbara J.		5	
McLean, Mark		6	
Alexander, Joe H.	12		
TOTAL VOTE:	13	6	

Amendment to SB 263

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
4 section 37 the following new subdivision:

5

Discrimination in Public Schools

6

193:38 Discrimination in Public Schools. No pupil shall be excluded from participation in,
7 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
8 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
9 national origin, all as defined in RSA 354-A. Any pupil claiming to be aggrieved by a discriminatory
10 practice prohibited under this section, may initiate or have initiate on his or her behalf by a parent,
11 guardian, or person having legal custody of the pupil a civil action against a school or school district
12 in superior court for legal or equitable relief, or with the New Hampshire commission for human
13 rights, as provided in RSA 354-A:27-28. The relief for a legal action in superior court shall be for
14 actual damages but shall not exceed the liability limits in RSA 507-B:4.

15

193:39 Discrimination Prevention Policy Required. Each school district and chartered public
16 school shall develop a policy that guides the development and implementation of a coordinated plan
17 to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the
18 basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status,
19 disability, religion, national origin, or any other classes protected under RSA 354-A.

20

2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
21 Amend RSA 354-A by inserting after section 26 the following new subdivision:

22

Opportunity for Public Education Without Discrimination a Civil Right

23

354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No pupil
24 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
25 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
26 status, familial status, disability, religion or national origin, all as defined in this chapter.

27

354-A:28 Procedure on Public School Complaints.

28

I. Any pupil claiming to be aggrieved by a discriminatory practice prohibited under RSA
29 354-A:27 may initiate or have initiated on his or her behalf by a parent, guardian or person having
30 legal custody of the pupil, a civil action in superior court against a school or school district for legal
31 or equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The
32 attorney general may also initiate a complaint with the commission.

Amendment to SB 263

- Page 2 -

1 II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
2 be subject to the procedures outlined in this chapter, with the exception that such complaints may
3 be removed to superior court at any time in compliance with RSA 508:4
4 3 Effective Date. This act shall take effect January 1, 2020.

Amendment to SB 263

- Page 3 -

2019-2310h

AMENDED ANALYSIS

This bill creates a cause of action for pupils injured by discrimination in public schools.

Rep. Alexander Jr., Hills. 6
Rep. Kenney, Straf. 6
May 14, 2019
2019-1982h
08/04

Amendment to SB 263

1 Amend RSA 193:38 as inserted by section 1 of the bill by replacing it with the following:

2

3 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
4 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
5 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
6 national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a
7 discriminatory practice prohibited under this section, including the attorney general, may initiate a
8 civil action against a school or school district in superior court for actual damages to the injured
9 party, or for equitable relief, or with the New Hampshire commission for human rights, as provided
10 in RSA 354-A:27-28. In any action or proceeding seeking to enforce this section, the court, in its
11 discretion, may award the prevailing party reasonable attorney's fees and costs.

12

13 Amend RSA 354-A:28, I as inserted by section 2 of the bill by replacing it with the following:

14

15 I. Any person claiming to be aggrieved by a discriminatory practice prohibited under RSA
16 354-A:27 may initiate a civil action in superior court against a school or school district for actual
17 damages, or equitable relief, or file a complaint with the commission as provided in RSA 354-A:21.
18 The attorney general may also initiate such a civil action in superior court or by complaint with the
19 commission. In any action or proceeding seeking to enforce this section, the court, in its discretion,
20 may award the prevailing party reasonable attorney's fees and costs.

Rep. Alexander Jr., Hills. 6
Rep. DiLorenzo, Rock. 17
Rep. Ladd, Graf. 4
May 28, 2019
2019-2309h
08/05

Amendment to SB 263

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
4 section 37 the following new subdivision:

5

Discrimination in Public Schools

6 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
7 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
8 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
9 national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a
10 discriminatory practice prohibited under this section, including the attorney general, may initiate a
11 civil action against a school or school district in superior court for legal or equitable relief, or with
12 the New Hampshire commission for human rights, as provided in RSA 354-A:27-28. The liability
13 limits in RSA 507-B:4 shall apply to any action brought under this section.

14 193:39 Discrimination Prevention Policy Required.

15 (a) Each school district and chartered public school shall develop a policy that guides
16 the development and implementation of a coordinated plan to prevent, assess the presence of,
17 intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity,
18 sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or
19 any other classes protected under RSA 354-A.

20 (b) Each public school shall develop a non-discriminatory policy that creates a safe, non-
21 discriminatory environment that prevents discrimination, including curricular and extra-curricular
22 activities. The policy shall support student health, safety, and well-being, and shall conform with
23 Title IX and ensure a necessary, reasonable, and appropriate means to maintain fair play for all in
24 extracurricular activities.

25 2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
26 Amend RSA 354-A by inserting after section 26 the following new subdivision:

27 Opportunity for Public Education Without Discrimination a Civil Right

28 354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No person
29 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
30 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
31 status, familial status, disability, religion or national origin, all as defined in this chapter.

1 354-A:28 Procedure on Public School Complaints.

2 I. Any person claiming to be aggrieved by a discriminatory practice prohibited under RSA
3 354-A:27 may initiate a civil action in superior court against a school or school district for legal or
4 equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The attorney
5 general may also initiate such a civil action in superior court or by complaint with the commission.
6 The liability limits in RSA 507-B:4 shall apply to the any action brought under this section.

7 II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
8 be subject to the procedures outlined in this chapter, with the exception that such complaints may
9 be removed to superior court at any time in compliance with RSA 508:4

10 3 Effective Date. This act shall take effect 60 days after its passage.

UNAPPROVED

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: May 15, 2019

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:30 am

Time Adjourned: 12:35 pm

Committee Members: Reps. M. Smith, Keans, Wuelper, Berch, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Stevens, Sylvia, Gordon, B. Griffin, McLean and Alexander Jr.

Bill Sponsors:

Sen. Sherman
Sen. Levesque
Sen. Watters
Rep. Altschiller

Sen. Fuller Clark
Sen. Rosenwald
Rep. Cannon
Rep. Janvrin

Sen. Hennessey
Sen. D'Allesandro
Rep. M. Smith
Rep. Ley

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Sherman, prime sponsor, introduced the bill to the committee. The original bill allowed the Department of Education to bring on action. Senate amendments worked with the Attorney General's office and bill now allows three options consistent with the rest of our laws.

Rep. Griffin: Q. Does "civil action" mean "civil" or "equitable"? **Ans.** Ask one better qualified.
Q. Remedy includes both? **Ans.** Yes.

***Melissa Debauch, representing self, Concord, NH - support**
See testimony submitted to committee.

Rep. Gordon: Q. What kind of relief would you look for? **Ans.** Not looking for money just for school to correct behavior.

Rep. Sylvia: Q. Is discrimination by peers covered? **Ans.** Not sure, but covering staff is critical.

***Shannon McGinley, Executive Director of Cornerstone Action- oppose**
For sake of clarity how this will affect Title IX sports. lack of age limit allows anyone to register and sue the school. These unclear parts of the bill could dramatically increase the workload of both Human Rights Commission (HRC) and courts.

Nancy Fortin, Hollis, representing self - support/students

Rep. Gordon: Q. How long was the case in Federal Court? **Ans.** Three years.

Rep. David Love, Derry - oppose

Rep. Gerri Cannon, representing self - support Online turned up only ten cases nationwide.

Rep. McLean: Q. Why three avenue for complaint in this bill? **Ans.** These allow alternatives depending on circumstances.

Rep. Sylvia: Q. How many cases might we expect? **Ans.** Few. Bill is really just let's everyone know that redress is available and discrimination not acceptable.

Rep. Gordon: Q. Bill allows anyone to sue school if aggrieved which could include other students. What standard could court use to determine of the complaint is valid? **Ans.** Don't know, but in Somersworth there is a procedure; several levels of review before case would ever get there.

Rep. Griffin: Q. "Person" undefined here as in RSA 193. Who could actually be aggrieved? **Ans.** I don't know. **Q.** Is this limited to pupils? **Ans.** I don't know.

Rep. Alexander: Q. In your School Board experience what do complaints want? **Ans.** They won't help.

Elizabeth Lahey, New Hampshire Attorney General's office - provide information/ answer question as necessary

Statute provides for either monetary or injunctive relief. HRC already has authority to seek these and their authority will be extended to school issues.

Rep. Alexander: Q. What might we expect as a range of damages. **Ans.** Hard to compare against other classes, cannot estimate.

Rep. McLean: Q. Relief in this bill is similar to other discrimination cases? **Ans.** Yes.

***Ahni Malachi, Executive Director, Human Rights Commission (HRC) - information purposes only**

This bill allows direct access to courts while the RSA 354 process begins with the HRC for unrepresented clients but others choose to go directly to court.

E. Lahey: HRC path included to make resolution process accessible to more people and it may get faster resolution -- important with short school year.

Rep. DiLorenzo: Q. What is HRC caseload and could HRC handle more cases?

Malachi: Ans. We have hundreds of cases in progress and would need more staff. **Lahey:** Maine's process must go through HRC and they have only a few. Pennsylvania with much larger population, has only about ten (10) such cases.

Rep. Smith: Q. did you ask for more people in you budget? **Malachi:** We did and that is still in budget but this bill could require even more. **Q.** So this would amount to small increase in work? **Malachi:** Well maybe. HRC has over 300 cases waiting for investigation now and any increase would add to that.

E. Lahey: Courts have already figured out what a hostile environment or bullying means. Both Federal standard exists and state employment standard exists.

Nicole Heimarck, New Hampshire School Board Association - oppose

1. Requirements already exist for schools to have policies on this issue.
2. No definition of what defines discrimination in school setting.

Rep. Chase: Q. Who ensures existing policies are followed? **Ans.** Required policies are tracked by Department of Education. **Q.** Can people come to NHSBA when they are not followed? **Ans.** Usually through the Department of Education.

Rep. Langley: Q. Is there a reporting requirement for incidents? **Ans.** Yes, and these are reported to the Department of Education. There is a task force working on bullying in schools.

Megan Douglass, Concord, representing self - support

We need civil action to get schools to pay attention to the legal requirements. Children in school should have at least the protection we give adults.

Rep. McLean: Q. Is definition in this bill clear enough? **Ans.** There are different classes of discrimination cases and the standards used in other areas would be applied here.

Roussel Family, Dan, Lisa, Emma: Family needs the opportunity to make their case against school.

***Jeanne Hruska, Political Director, ACLU-NH - support**

This bill is first recommendation of Governor's Advisory Council on Diversity and Inclusion. Families are looking for help and a cap on monetary damages is acceptable. Families need the immediate option of going to court but other methods could be used. Federal law in other areas where federal law is not sufficient and we have state law in other areas where Federal law exists. Quicker remedy might mean less serious consequences for victims.

Respectfully submitted,



Rep. Kurt Wuelper

***Pat Yoshi, Racial Unity Team of Exeter - support**
Pink card — chose not to speak

Pink card — Glen Co patch, representing Grant Co patch/ student - support

**Nicole Lamarck and Barrett Christina, New Hampshire School Boards Association-
oppose**

Pink card — *Beth Scare on behalf of Stephen Scare - oppose



HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 5-15-2019

ROOM: 208

Time Public Hearing Called to Order: 10:30

Time Adjourned: 12:35

(please circle if present)

Committee Members: Reps. M. Smith, Keans, Wuelper, Berch, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Kenney, Langley, Stevens, Hopper, Sylvia, Gordon, Janvrin, B. Griffin, McLean and Alexander Jr.

Bill Sponsors:

Sen. Sherman
Sen. Levesque
Sen. Watters
Rep. Altschiller

Sen. Fuller Clark
Sen. Rosenwald
Rep. Cannon
Rep. Janvrin

Sen. Hennessey
Sen. D'Allesandro
Rep. M. Smith
Rep. Ley

13 LISA, DON, EMMA ROUSSEL & SUPPORT - EMMA DISCRIMINATED AGAINST WITH NO RECOURSE FOR THEM

TESTIMONY

14 JEANNE HRUSKA - ACLU NH - SUPPORTS

* Use asterisk if written testimony and/or amendments are submitted.

1 Sen Sherman: Introduced the bill. original bill allowed the Dept of Education to bring on action. Senate amendments worked w/ AG office and bill now allows three options consistent w/ rest of our laws

2 Melissa Hinebauch: Supports: No current way in law to seek protection for students in school outside the school

* 3 Shannon McKinley: Cornerstone Action: opposes - wants study Committee

4 Nancy Fortin: Supports - SB263 will offer state path to resolve questions that her family had to take to Federal court.

5 Rep David Bone: opposes - Safety issues - will cause more suits

6 Rep Gen Cannon: Supports

7 Elizabeth Lacey: NH AG Office - will answer questions

8 Ahni Malachi - Human Rights Commission - Info only

9 Beth Scaer - opposes - has written.

10 Glen Copatch - Supports: His son severely disabled by bullying and school not accountable

* 11 Nicole Kemarck - NH School Board Assoc. - opposes -

12 MEGAN DOUGLASS - ATTY - SUPPORTS

+ 4 PAGES

Kurt Wuelper

SB263 HEARING

5-15-19 VV

1 of 4 1-15-19

10:30

12:38

① Sen Sherman

Q ~~GRIFTIN~~: Does "civil action" mean "civil" or "equitable"?

A ASK one better qualified

Q Remedy includes both? A: yes

② # Hinebaugh

Q ~~Woodbury~~: Gordon: What kind of relief would you look for?

A Not looking for money just for school to correct behavior

Q Sylvia - is discrimination by peers covered?

A Not sure but covering staff is critical.

③ Shannon Mc Ginty

For sake of clarity, how this will affect Title IX sports -
Lack of age limit allows anyone to register and sue the school - ~~the~~ these unclear parts of bill could dramatically increase workload of both HRC and courts

④ Nancy Fortin

Q ~~Gordon~~: How long was the case in Federal Court

A 3 years

⑤ Gervé Cannon

Online search ~~is~~ turned up only 10 cases nationwide.

Q McLEAN - Why three avenues for complaint in this bill

A These allow ~~an increasing~~ alternatives depending on circumstances

Q Sylvia - How many cases might we expect?

A ~~not~~ Few. Bill to really just lets everyone know that redress is available and discrimination not acceptable

Q Gordon - bill allows anyone to sue school if aggrieved which could include other students, what standard could courts use

CANNON (CONT)

to determine if the complaint is valid?

A Don't know, but in Somerset there is a procedure - several levels of review before case would even get there

Q Grithis: "Person" undefined here or in RSA 193. Who is who could actually be aggrieved?

A Don't know

Q Is this limited to pupils?

A Don't know

Q Alexander: In your school board experience what do complaints want?

A They want help

Elizabeth Lehey -

Statute provides for either monetary or injunctive relief. HRC already has authority to seek these and their authority will be extended to school issues

Q Alexander: What might we expect as a range of damages

A Hard to compare against other classes - can't estimate

Q McLeod: Relief in this bill is similar to other discrimination cases?

A Yes

Q Malachi: ~~HRC~~ usually this bill allows direct access to courts while the ~~HRC~~ RSA 354 process begins with the HRC and for unrepresented clients but others choose to go directly to court

A Lehey: HRC path included to make resolution process accessible to more people and it may get faster resolution - important with short school year

A Yes and there are reported to Dept of Education and there is a task force working on bullying in schools

(12) Megan Douglass

We need civil action to get schools to pay attention to the legal requirements. ~~It~~ Children in school should have at least the protection we give adults.

Q McKAN - Is definition in this bill clear enough?

A There are different classes of discrimination cases and the standards used in other areas would be applied here

(13) Roussel Family

Family needs the opportunity to make their case against school.

(14) HRUSKA

This bill is first recommendation of Governor's Advisory Council on Diversity and Inclusion. Families are looking for help and a cap on monetary damages is acceptable. Families need the immediate ~~or~~ option of going to court but other methods could be used. Federal law is not sufficient and we have state law in other areas where Federal law exists. Quicker remedy might mean less serious consequences for victims.

SIGN UP SHEET

1062

To Register Opinion If Not Speaking

Bill # SB 263 Date May 15, 2019
 Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Sen. Cindy Rosenwald			SEN. DISTRICT #13	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep David Love	Derry		Rock 6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cheri Falk	Wilton		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lucy Cridtan	Concord		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nancy Brennan	Weare		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alvin See	London		Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Barrett M. Christina	NH School Boards Association			<input type="checkbox"/>	<input checked="" type="checkbox"/>
REP JOHN POTUCEK	- ROCKINGHAM 6-DERRY			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rep TAMARA LE	NORTH HAMPTON		Rock #31	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Reed Panasiuk				<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Al Baldasaro	Londonderry			<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jeanne Torpy	Concord		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dennic Jakubowski	London		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deborah Jakubowski	London		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Debbie Adam	Hooksett		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SUSAN COVERZ	CONTOCOOK		SELF	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maura Willing	Concord		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Louise Spencer	Concord		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep James Whittemore	Hudson		Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KEITH KENNING	WATFORD			<input checked="" type="checkbox"/>	<input type="checkbox"/>
Becky Whitley			CBHC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ahni Malachi	Exec. Dir, Human Rights Commission			<input type="checkbox"/>	<input type="checkbox"/>
Elizabeth Lahey	Civil Rights Unit, NH DOJ			<input type="checkbox"/>	<input type="checkbox"/>

↳ Emma Roussel

inform-
ation

Testimony



SB263
③

TO: House Judiciary Committee

FROM: Shannon McGinley, Executive Director of Cornerstone Action

DATE: Wednesday, May 15, 2019

RE: SB 263, relative to anti-discrimination protection for students in public schools. Please vote for a study committee.

Cornerstone has serious concerns with SB 263 that we believe call for longer study of the bill. Despite the good intentions of the sponsors, SB 263 does not merit an Ought to Pass recommendation.

This act is entitled “An act relative to anti-discrimination protection for *students* in public schools” (emphasis added). No one wants invidious discrimination in schools. But as is often the case, the bill's title doesn't tell the whole story. We have to look at the text to discern what the bill would actually do.

SB 263 seems to assume that students are not already covered under civil rights law and therefore need a new statute in order to be included. If you believe that is the case, strive for clarity. Currently, SB 263 falls short in that respect.

This bill includes **sex** and **gender identity** as protected categories, which would effectively prohibit schools from making any distinctions on the basis of sex or gender identity. What effect would this have on sex-segregated school sports? When your colleagues on the Education Committee heard this bill, this question elicited responses ranging from dismissal to reassurance that sports would not be affected.

For the sake of clarity, the sports issue needs to be spelled out. According to testimony in the Education Committee, the NHIAA allows each district to make its own decision on how to accommodate transgender athletes. That is not a tenable solution under SB 263, which states that no person shall be excluded from participation in a public school activity on grounds of sex or gender identity (among other protected classes).

This bill requires school sports teams to allow students to compete on any team of their choosing, so long as that choice is related to “gender identity.” What happens then to long-established competition and testing standards based on the physical differences between the sexes? Will biological females be permanently disenfranchised in certain sports?

Strong Families for a Strong New Hampshire

P.O. BOX 4683, MANCHESTER, NH 03108 | PH (603) 228-4794

WWW.NHCORNERSTONE.ORG

In a work session on this bill, House Education members were told that this is a non-issue, since participation in a sport is a privilege (i.e. something earned), not a right. This ignores that fact that participating in tryouts is a right. Furthermore, looming over any discussion of sports equity is Title IX.

Enacted in 1972, Title IX prohibits discrimination based on sex in schools. However, Title IX has been interpreted to mean that schools *can* discriminate on the basis of sex if there is sufficient reason, but schools are required to have “equal” sports *opportunities* for men and women, including equitable funding, facilities, etc. Presumably, SB 263 would be [interpreted](#) in line with Title IX - allowing sex-segregation provided that there is equal opportunity for all sexes.

If Title IX is applied, and schools are required to provide equal funding for the two sexes, male-sports and female-sports, why would they not also be required under SB263 to do the same for each self-defined gender category? Must they, for example, create a “[agender](#)” or non-binary league if a student so identifies? And if not – why not? Is agender less valuable under the law than male or female? Why or why not?

Furthermore, if one argues that one needs a “critical mass” before a sports team is created, then the question remains: are we discriminating against “agenders” because they are a minority gender? As far as the constitutionality of such a move, [Grutter v. Bollinger](#) (2003) suggests that schools may use a “critical mass” criteria to create *more* diversity (in that case, for admissions and race), but seems to imply that a school could not use a “critical mass” criteria to *restrict* diversity.

Cornerstone has supporters all over the state whose greatest concern with SB 263 is its potential effect on athletic competition. Please respect your constituents, including New Hampshire students, by giving this aspect of the bill your serious consideration.

Let’s look at other potential consequences of this bill:

- Since the bill “protects” *persons* generally (not just students), anybody of any age could enroll in any class or publicly sponsored activity, if application procedures were properly followed.

- There is no minimum age limit on “gender identity.” Given this legal definition, a first-grade student could sue a school for misgendering them or failing to respect that child’s gender expression (as well as causing that [teacher to lose his job](#); see <https://www.heritage.org/gender/commentary/teacher-was-fired-misgendering-student-who-could-be-next>).

- This bill subjects schools to sometimes impossible and often contradictory requirements as a [MN school district recently found](#) out when trying to accommodate a girl swimming on the boys' team. (See <https://www.frc.org/get.cfm?i=WA19C60&f=WU19C18>)

- This bill is *not* an anti-bullying measure, since it only applies to schools, not students. It would not address student-to-student mistreatment.

- Given that gender identity has been newly-created as a special class under anti-discrimination law, neither legislators nor members of the general public can be sure of what constitutes "discriminatory practice." Is it discriminatory to refer to a person using the pronouns consistent with the person's biological sex rather than the person's adopted gender? Do you want to spell that out, or will you leave that to courts and bureaucrats?

-Under SB 263, aggrieved persons have recourse to the courts or the Human Rights Commission. Are outcomes similar between those two tribunals? In other words, in giving options for grievance procedures, is equity well-served in both places?

-As for handling grievances under SB 263, whether judicially or administratively, there would have to be a cost involved. This bill needs a fiscal note that reflects the staffing required to do justice to anyone with a grievance. This includes the costs that would have to be borne by local entities, namely school districts, who would find themselves sued under the provisions of SB 263. If the definition of discriminatory practice is left to the courts, then costly litigation is inevitable.

If passed, SB 263 would sow more chaos than protection. The bill offers a counterfeit compassion to those who are truly struggling with gender dysphoria; an unsustainable short-term solution to a valid long-term problem. We can treat our children and our society better.



SB263 (11)

May 15, 2019

New Hampshire House of Representatives
Judiciary Committee
107 North Main Street
Concord, NH 03301

Re: SB 263

NHSBA
25 Triangle Park Drive
Suite 101
Concord, NH 03301
(603) 228-2061
www.nhsba.org

Officers

Travis Thompson, President
Exeter Regional Cooperative

Amy Facey, 1st Vice-President
Souhegan Cooperative

Brenda Willis, 2nd Vice-
President,
Derry Cooperative

Shannon Barnes, Past-President
Merrimack

Staff

Barrett M. Christina
Executive Director

William J. Phillips
Staff Attorney

Nicole Heimarck
Director of Governmental
Relations

Amanda Hodgman
Operations Manager

Dear Members of the House Judiciary Committee –

Please accept this letter as the New Hampshire School Boards Association's written comments with respect to SB 263. While NHSBA supports the intent of this bill and firmly believes that all students should have access to an education without fear of discrimination, NHSBA believes the bill, in its current form, merits more discussion, consideration, and possible amendments.

First, local school boards are primarily committed to ensuring that all students are entitled to safe learning environment, free from bullying, harassment and discrimination. Indeed, various New Hampshire statutes and New Hampshire Department of Education Rules require local school boards to adopt policies and implement practices to provide such a safe learning environment.

For example, RSA 186:11, XXXIII obligates the State Board of Education – and by extension, local school districts – to ensure that there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or economic status of the benefits of educational programs or activities. RSA 193-F, the "Pupil Safety and Violence Prevention Act", is a very comprehensive statute, with significant investigatory and reporting requirements placed on school districts. New Hampshire Department of Education Rule 303.01(i) requires school boards to adopt a policy to ensure that there shall be no unlawful discrimination on the basis of sex, race, age, creed, color, marital status, national origin, or disability in educational programs or activities. Further, Ed 303.01(j) requires local school boards to adopt a policy on sexual harassment.

Second, in addition to these laws, numerous other laws – both state and federal – require school boards to adopt local policies that ensure non-discrimination with respect to several school district services. Such requirements mandate local school board policies on: Non-discrimination; Commitment to Religious Neutrality; Procedural Safeguards for Non-discrimination on the Basis of Handicap/Disability; Meal Charging; Equal Employment Opportunity; Sexual Harassment (Staff); Programs for Students with Disabilities; Sexual Harassment (Students); and Bullying.

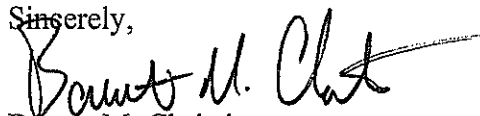
Third, NHSBA has concerns that SB 263 does not define or adequately explain what constitutes “discrimination” in public schools. This is especially important when compared with other anti-discrimination provisions of RSA 354-A. For example, RSA 354-A:7 defines unlawful discriminatory practices with respect to employment. That statute is one-and-a-half pages and contains seven lengthy paragraphs (not counting subparagraphs) that define prohibited discriminatory practices. RSA 354-A:10 defines unlawful discriminatory practices with respect to fair housing and contains eight paragraphs describing unlawful discriminatory activities. RSA 354-A:17 defines unlawful discriminatory with respect to public accommodations and is a very detailed and specific paragraph.

Conversely, the proposed language in SB 263 states only that no person shall be “subjected to discrimination” in public schools without further defining, explaining or expounding on what the unlawful discriminatory practices are. NHSBA believes that in order to provide the protections sought via SB 263, “unlawful discriminatory practices” needs to be defined as it is in other provisions of RSA 354-A.

Last, NHSBA would again like to reiterate our support for the intent of this bill. NHSBA advocates to its member school boards that a board’s first priority is always student safety, and that every student has the right to receive an education without fear of discrimination, harassment, or bullying. While NHSBA believes SB 263 has significant merit, we also believe the bill warrants more discussion to address the matters outlined herein.

Thank you for the opportunity to comment and for your attention to this matter.

Sincerely,



Barrett M. Christina
Executive Director

New Hampshire Commission for Human Rights (Testimony on SB 263 as Amended)

- My name is Ahni Malachi, I am the Executive Director for the New Hampshire Commission for Human Rights.
- I am here today to give testimony *for informational purposes only* on the Amendment to SB 263 (#2019-1690h) which would add *Opportunity for Public Education Without Discrimination a Civil Right* as a new subdivision to the anti-discrimination statute, RSA 354-A.
- As you may already know, the Commission is a state agency established in 1965 by RSA 354-A for the purpose of eliminating discrimination in employment, housing, and places of public accommodations. The commission has the power to receive, investigate and pass upon complaints of illegal discrimination and to engage in research, education, and community outreach designed to prevent discrimination.
- The agency is currently comprised of an Executive Director, an Assistant Director, 4 full-time Investigators, 1 part-time Investigator, and 2 Administrative Support Staff: 1 full-time, the other part-time.
- With no opinion either in support of or against SB 263 as Amended, I am sharing information for your consideration specifically relative to the fiscal impact to the Commission.
- At this juncture, the Commission has seen an increase in cases filed under the current statute. It is unclear how many people will call for information or file with us or how soon this will start if this proposed statutory change takes effect. There is a real potential for a significant amount of cases under the new subdivision to come through the door. People would at a minimum contact the office for information, which would require further action including opening a charge, determining jurisdiction, and further investigation.
 - To this end, the Commission for Human Rights will need to add 7 more staff members to create an 'education unit' and by doing so, assist in the investigation and adjudication of claims brought in the new subdivision being proposed in SB 263. The breakdown of the additional staff members is as follows:
 - 1 Supervisor IV
 - 2.5 Anti-Discrimination Investigators
 - 1 Attorney
 - 1 Paralegal
 - 1 Clerk IV
 - To accommodate the additional staff and foot traffic, the Commission will also need to move to a significantly larger office space.
 - In addition, the number of *pro se* (or unrepresented) complaints would most likely increase.
 - Currently, at the Commission, approximately **56%** of the cases are filed by *pro se* complainants.

New Hampshire Commission for Human Rights (Testimony on SB 263 as Amended)

- *Pro se* complainants tend to need more technical assistance in understanding the investigative and adjudicative process involved with having a case before the Commission.

- Finally, there are other costs which need to be considered:
 - New/updated graphics: this includes posters, pamphlets, forms, etc.
 - Interpretation and Translation services: languages, braille, sign language.
 - Technology costs: hardware and software
 - In-State Travel: to allow for Investigators to perform site visits as needed across the state.
 - Out of State Travel: to allow Investigators to attend any needed training (DoE, etc.)
 - Training: regarding Special Education issues (IEPs and 504 Plans).
 - As we are not completely clear on how this will progress should SB 263 (as amended) go into effect, these may not be all of the associated costs.

- As stated previously, there are currently 4 full-time and 1 part-time Investigators to investigate employment, public accommodation, and housing cases for the state. The part-time Investigator conducts intake and handles cases waiting to be assigned to a full-time investigator. At this time the Commission has a total of **560** open cases, with approximately **362** of the open cases awaiting assignment. Each full-time Investigator maintains an active caseload of approximately 50 (revolving) cases.

Thank you for your time, patience and consideration.

Ahni Malachi
Executive Director, NH Commission for Human Rights
(603) 271-6838 (direct dial)
Ahni.Malachi@nh.gov

SB263
14



**Statement by Jeanne Hruska, Political Director ACLU-NH
House Judiciary Committee
Senate Bill 263
May 15, 2019**

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. I appreciate the opportunity to testify today in support of SB263, which would fill a gap in our state law by providing our students with state-level protections against discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, physical or mental disability, religion or national origin.

Governor Sununu’s Advisory Council on Diversity and Inclusion recommended this bill. The Advisory Council, of which the ACLU-NH is a member, was launched in December 2017 through Executive Order 2017-19.¹ It spent much of last year conducting listening sessions across the state to hear directly from Granite Staters. Two issues that came up over and over again at the listening sessions were concerns over student discrimination and the need for racial justice, including in our public schools.

These concerns are particularly valid when we recognize that New Hampshire does not provide students with comprehensive state-level protections against discrimination. Instead, students must rely on piecemeal federal protections, which are subject to change and difficult to access. In the Granite State, we provide workers with protection from discrimination, making it all the more alarming that we do not provide young people with similar protections.

The incidents of racial bias that lead up to the Governor’s decision to launch the Advisory Council on Diversity and Inclusion were aimed largely at and involved young people. These events came up at listening sessions, with the takeaway being that young people are on the front lines of our state’s struggle to better support and promote diversity and inclusion. One of the most immediate and tangible ways we can support our young people is by providing them comprehensive legal protections against discrimination. If we do not prohibit discrimination in law, how can we expect to promote tolerance in practice?

This is why the Advisory Council on Diversity and Inclusion included this legislation as its number one recommendation in its 2018 Legislative and Budgetary Recommendations.² This recommendation is also a direct response to the Governor’s task to the Council when it first was launched to “review and analyze New Hampshire laws, regulations, and agency policies and procedures, and recommend changes or amendments, where necessary, to further combat discrimination and advance the ends of diversity and inclusion.”

¹ <https://www.governor.nh.gov/diversity/index.htm>

² <https://www.governor.nh.gov/diversity/documents/2018-legislative-budgetary.pdf>

A pronounced example of discrimination in our schools is the disproportionate use of exclusionary discipline. The most recent data released by the U.S. Department of Education's Office of Civil Rights reveals that students of color and students with disabilities are disproportionately subjected to exclusionary discipline across our state.³ This is not unique to one or two school districts, but rather is reflected across the whole state.

The disproportionate use of exclusionary discipline against certain students has short and long-term consequences for those students. Not only is there the immediate impact of being suspended, but such students are also then disproportionately subjected to the collateral consequences of exclusionary discipline. The U.S. Government Accountability Office summed up these consequences of exclusionary discipline well in its report to Congress last year entitled "Discipline Disparities for Black Students, Boys, and Students with Disabilities":

Research has shown that students who experience discipline that removes them from the classroom are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system. Studies have shown this can result in decreased earning potential and added costs to society, such as incarceration and lost tax revenue.⁴

In effect, the racial disparities in the use of exclusionary discipline can contribute to similar disparities in those who enter the school-to-prison pipeline and to racial inequality in education, which impacts future earning potential.⁵ In a state where students have a constitutional right to an adequate education, it is worth considering how the disproportionate use of exclusionary discipline against select students impairs that right. SB263 could bring new focus to resolving the disproportionate use of exclusionary discipline in New Hampshire.

Students of color feel like second-class citizens in our schools. Apart from the Advisory Council, the ACLU-NH has been meeting with students across the state to learn more about their experiences in the classroom. We wanted to share a couple of their experiences with you today.

When we asked a group of ten black elementary school boys in Manchester if they had ever been suspended, more than half raised their hands. They were embarrassed to talk about their suspensions in detail. They felt ashamed — like being suspended branded them as a "bad kid." These kids talked about being suspended for talking too much in class, talking back to teachers, and not following directions (which, some of them emphasized, they had not understood, as they were still learning English). Some kids were suspended for fighting too, but when pressed for details they were usually fighting because they were being bullied because of their race. They fought back when they felt like their teachers were not able to protect them or did not care to. Being suspended for perceived minor slip-ups or behaviors they felt like they could not avoid made these students feel alienated from their school community. They did not describe school as a place where they feel safe and valued, but as somewhere they feel constantly surveilled and policed, where they feel like they always have to be on the defensive.

³ http://www.nhla.org/assets/customContent/FINAL_Keeping_Kids_in_School_-_The_Urgent_Need_to_Reform_School_Discipline_in_NH.pdf

⁴ Discipline Disparities for Black Students, Boys, and Students with Disabilities, March 2018, <https://www.gao.gov/assets/700/690828.pdf>

⁵ http://crsp.pitt.edu/sites/default/files/Just%20Discipline%20and%20the%20School%20to%20Prison%20Pipeline%20in%20Pittsburgh_1.pdf

Students of color also described the subtle, consistent everyday ways in which they are made to feel like second-class citizens. They described being scolded for using their phones or talking in class, and then watching white kids do the same thing without any consequences. They described teachers ignoring their questions in class. They described teachers in AP classes having lower expectations of them, not treating them as serious students. They described guidance counselors dismissing their concerns, not helping them change schedules, and not explaining the credit system or graduation requirements. Students shared a sense that when they or their parents brought concerns to school administrators they were ignored and dismissed because they were seen as unimportant. Students said they felt targeted by teachers because of their families, their siblings, or the way they dressed. They also described a sense that their people, their histories, were completely overlooked by school curricula.

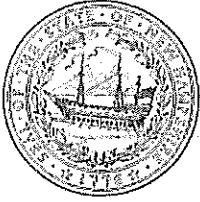
For students of color in New Hampshire, the cumulative effect of the daily experience of feeling ignored academically, ostracized socially, and consistently, unfairly targeted for discipline is a sense of powerlessness, alienation, and despair. In effect, students of color feel like they are being pushed out of the school community and that exclusion hinders their success, undermines the goals of our education system, and contravenes our fundamental values.

The House Education Committee strengthened the bill. After its own hearing and in consultation with members of the Advisory Council, including the Attorney General’s Office, House Education amended the bill to include the option of going to the Human Rights Commission (HRC), in addition to the option of going to court. We supported this amendment, not only because it broadens the options available to parents and students, but also because it is directly responsive to the tasks charged by Governor Sununu to the Advisory Council. When the Council was launched, the Governor asked it, amongst other things, to “identify and recommend revisions to RSA 354-A and the scope of the duties of the Commission for Human Rights to combat discrimination and advance diversity and inclusion.”⁶

In New England, New Hampshire is behind the curve in ensuring that students are protected from discrimination when they go to public school. SB263 would rectify this by providing legal protections and ensuring an enforcement mechanism. The right to go to court or to the HRC in SB263 is necessary to ensure that the bill’s protections from discrimination are not just aspirational. Additionally, it would finally give the NH Department of Justice legal recourse to respond to incidents of racial bias in public schools. Right now, the NH DOJ’s Civil Rights Unit has no jurisdiction to intervene in cases of student discrimination. This must change.

For these reasons, the ACLU-NH respectfully urges the members of this committee to vote *ought to pass* on SB263.

⁶ <https://www.governor.nh.gov/diversity/index.htm>



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

**STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR**

Executive Order 2017-09

An order establishing the Governor's Advisory Council on Diversity and Inclusion

WHEREAS, New Hampshire derives strength and prosperity from valuing the diversity of its population and its commitment to equal justice for all; and

WHEREAS, when New Hampshire draws on the strengths and talents of individuals who reflect its full population, it is better able to understand and meet the needs of its residents and their differences; and

WHEREAS, New Hampshire has an obligation to enforce and safeguard the civil rights of all New Hampshire residents and visitors; and

WHEREAS, New Hampshire enacted RSA 354-A and created the Commission for Human Rights to eliminate discrimination based on age, sex, sexual orientation, race, creed, color, marital status, familial status, physical or mental disability or national origin in employment, public accommodations, and the sale or rental of housing or commercial property; and

WHEREAS, when New Hampshire passed RSA 354-A and created the Commission for Human Rights, it declared that the prevention of discrimination is "a matter of state concern" and that discrimination "menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants"; and

WHEREAS, New Hampshire must continue to engage in an ongoing and comprehensive discussion regarding further steps that it must take to ensure that all New Hampshire residents are free of discrimination and have a full and meaningful opportunity to participate and prosper in our community.

NOW, THEREFORE, I, CHRISTOPHER T. SUNUNU, GOVERNOR OF THE STATE OF NEW HAMPSHIRE, by the authority vested in me pursuant to part II, article 41 of the New Hampshire Constitution, do hereby order, effective immediately, that:

1. There is established the Governor's Advisory Council on Diversity and Inclusion. The Council shall work cooperatively with the New Hampshire Commission for Human Rights, the Civil Rights Unit of the New Hampshire Department of Justice, and any other relevant State entities to:

- a) Review and analyze New Hampshire laws, regulations, and agency policies and procedures, and recommend changes or amendments, where necessary, to further combat discrimination and advance the ends of diversity and inclusion;
- b) Identify and recommend ways in which the State can support local and community efforts, through educational programs or otherwise, to combat discrimination and advance diversity and inclusion;
- c) Identify and recommend ways in which the State can partner with non-governmental organizations to combat discrimination and advance diversity and inclusion; and
- d) Identify and recommend revisions to RSA 354-A and the scope of the duties of the Commission for Human Rights to combat discrimination and advance diversity and inclusion.

2. In its first year, the Council shall host a series of community forums across the State to take public input and suggestions on issues within the Council's charge.

3. The Council shall meet at least monthly and shall submit to the Governor, on or before June 1st of the year 2018 and on or before December 1st of every year thereafter, a report which summarizes the Council's activities during the calendar year and any recommendations that the Council develops.

4. The Council shall consist of the following members:

- a) Attorney General, or designee;
- b) Commissioner of the Department of Safety, or designee;
- c) Commissioner of the Department of Education, or designee;
- d) Chancellor of the University System of New Hampshire, or designee;
- e) Chancellor of the Community College System of New Hampshire, or designee;
- f) Commissioner of the Department of Health and Human Services, or designee;
- g) Commissioner of the Department of Administrative Services, or designee;
- h) Commissioner of the Department of Labor, or designee;
- i) Chair of the New Hampshire Commission for Human Rights, or designee;
- j) Representative from the New Hampshire ACLU, appointed by and serving at the pleasure of the Governor;
- k) Representative from the New Hampshire Police Chiefs Association, appointed by and serving at the pleasure of the Governor;
- l) Representative from the New Hampshire Sheriffs Association, appointed by and serving at the pleasure of the Governor;

- m) Representative from the New Hampshire Municipal Association, appointed by and serving at the pleasure of the Governor;
- n) Two public members with leadership experience in cultural competency, diversity, and inclusion, appointed by and serving at the pleasure of the Governor;
- o) Two additional members appointed by and serving at the pleasure of the Governor; and
- p) One additional member who shall serve as Chair of the Commission, appointed by and serving at the pleasure of the Governor.

5. The Council may, as it deems appropriate, organize its membership into subcommittees for the purpose of examining specific topics within the Council's charge.

6. A majority of appointed Council members shall constitute a quorum, and all official actions of the Council shall require a majority vote of those present and voting.

Given under my hand and seal at the Executive Chambers in Concord, this 14th day of December, in the year of Our Lord, two thousand and seventeen, and the independence of the United States of America, two hundred and forty-one.


GOVERNOR OF NEW HAMPSHIRE



CHRISTOPHER T. SUNUNU
Governor

GOVERNOR'S ADVISORY COUNCIL ON DIVERSITY AND INCLUSION

2018 Legislative and Budgetary Recommendations

Rogers Johnson, Chair
Commissioner John Barthelmes
Devon Chaffee
Commissioner Frank Edelblut
Sharon Harris
Elizabeth Lahey
Jose Luna
James Maggiore
Dr. Salman Malik
Commissioner Ken Merrifield
Commissioner Jeffrey Meyers
Dottie Morris
Pawn Nitichan
Marianne Rechy
Sheriff Eliezer Rivera
Allyson Ryder
Chief Douglas Wyman

The Governor's Advisory Council on Diversity and Inclusion has conducted 14 public and targeted listening sessions in Claremont, Concord, Conway, Dover, Durham, Keene, Laconia, Lancaster, Manchester, Nashua, Newmarket, and Portsmouth. Members of the public also provided input and feedback to the Council via email and other written submission.

Consistent with Executive Order 2017-09, in 2019, the Council will prepare a full report to summarize and present its complete findings and to make any related recommendations.

However, during its listening sessions, the Council consistently heard from participants, including parents, educators, administrators, students, who raised significant concerns about two particular systems—public education and public transportation. While the Council will address each of these subjects in its forthcoming report, it issues this memorandum to make six discrete recommendations in advance of the upcoming legislative session to address these and related areas of concern.

1. *Legislative recommendation:* The Council received significant feedback at every listening session about persistent discrimination and inequities in schools, and the inadequacy of available resolution and redress processes. This discrimination included, but was not limited to:

- Unequal enforcement of discipline (*e.g.*, race and disability)
- Unequal access to educational opportunities (*e.g.*, race, national origin/language)
- Inability to obtain learning-ability testing (*e.g.*, English language learners)
- Exclusion and segregation (*e.g.*, disability, gender identity, national origin/language)
- Harassment and bullying (*e.g.*, sex, national origin, gender identity, race)
- Lack of compliance with requirements regarding communication access

New Hampshire is one of the only states in the northeast without any state statutory anti-discrimination protection for students. Accordingly, the Council recommends that New Hampshire enact a state statute that prohibits discrimination against students in public schools based on race, color, sex, religion, national origin, mental or physical disability, gender identity, or sexual orientation.

2. Legislative recommendation: In 2018, the legislature amended RSA 354-A to expressly prohibit discrimination based on gender identity. In doing so, the legislature declared that “practices of discrimination against any of its inhabitants because of age, sex, *gender identity*, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.” (emphasis added).

Consistent with this, the Council in its June 1, 2018 preliminary report stated and recommended:

In order for New Hampshire and its communities to fully ensure and protect the civil rights of their transgender and gender non-conforming residents and visitors, all statutes, ordinances, regulations, and policies that reference identity-based classes should be amended to include gender identity as an express protected class, so as to align with the Law Against Discrimination.

Consistent with this recommendation, the Council now recommends that the following statutes be amended to include an express reference to gender identity as a prohibited basis of discrimination. This list is not exhaustive. There are likely other statutes, ordinances, regulations, and policies that are in need of a similar amendment.

Statutory Provisions	Title of Statute	Existing Statutory Language with Amendment in Bold and Italics
RSA 21	[Insert New Section] Statutory construction; Gender Identity and Expression	Insert new section defining “gender identity or expression” as defined in RSA 354-A:2, XIV-e: <i>“Gender identity” means a person’s gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person’s core identity provided, however, that gender-related identity shall not be asserted for any improper purpose.”</i>



Stephen Scaer
111 East Hobart Street
Nashua, NH
sscaer@gmail.com

My name is Stephen Scaer, I live in Nashua NH, and I urge you to vote Inexpedient to Legislate on SB 263 which would allow boys who identify as girls to sue their school districts if they don't get a spots on girls' sports teams. As a high school teacher and as a father who has raised two daughters who loved school sports, I believe this will have a negative impact on girls throughout the state.

Recently, Connecticut runner Selina Soule was beaten by two muscular young men in a high-school championship, missing out for a chance to compete before college coaches. "We all know the outcome of the race before it starts; it's demoralizing," she said of having to compete against boys. She is joined in her pleas for fairness by feminist athlete Martina Navratilova, former gymnast Gabby Logan, and ex-Olympic swimmer Sharron Davis.

The feminist group Women's Liberation Front is fighting transgender legislation because it will erase all of their hard-won rights and protections, including Title IX and private spaces for women, by making them available to men who claim to be women.

These laws have repercussions for educators, too. Indiana school teacher John Kluge was forced to resign because he refused to supervise a naked girl in a boys' locker room. Teachers in Indiana and Virginia have been fired for refusing to use pronouns that did not correspond with biological reality. Laws such as SB 263 send the message that faithful Christians, or anyone who respects the biological difference between boys and girls, need not apply at public schools.

Gender ideology is hardly settled science, and we should be careful about passing laws that promote it among teenagers. There's no shortage of YouTube videos of young people detransitioning, and detailing the trauma and the permanently damaging medical procedures they suffered because of misguided adults.

We have long discriminated between men and women to protect women's rights by provide separate sports teams and facilities. This bill would force us to abandon objective and important differences in sex, and instead discriminate based on what people claim themselves to be. It's not fair to force girls to compete against boys. I urge you to vote ITL on SB 263.

SB263
Yosha

TESTIMONY BEFORE JUDICIARY COMMITTEE, May 15, 2019

RE: SB263

Good morning to the members of the Judiciary Committee:

My name is Pat Yosha, I am a resident of Exeter, and I am here today to represent the Racial Unity Team of Exeter. The Racial Unity Team has been active in Exeter since 2015; its mission is "To advance relationships among people of different racial identities, increase understanding, and reduce bias in our community." To that end, the team has held an annual Racial Unity Day in September, which highlights a guided walk of sites in our town which have specific racial discrimination aspects ranging from the 1770's to current times. We have prepared resource lists of reading and film viewing opportunities. We are working to expand our presence in the Exeter area.

To increase understanding and reduce bias in our community, we have been meeting with educators in our schools, with an eye to addressing interrelationships and behavior among students and staff, and eventually to influence the curriculum itself so real equity results.

Like all of you in this legislature, we have become aware of sadly disruptive discriminatory situations in several New Hampshire school districts in the past few years. Racially insensitive incidents have been brought to public attention; teachers, students, administrators, parents and community organizations of all kinds are feeling tension, and have

Bill as
Introduced

SB 263 - AS AMENDED BY THE HOUSE

03/28/2019 1141s
03/28/2019 1290s
8May2019... 1690h

2019 SESSION

19-0995
08/05

SENATE BILL **263**

AN ACT relative to anti-discrimination protection for students in public schools.

SPONSORS: Sen. Sherman, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Levesque, Dist 12; Sen. Rosenwald, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Watters, Dist 4; Rep. Cannon, Straf. 18; Rep. M. Smith, Straf. 6; Rep. Altschiller, Rock. 19; Rep. Janvrin, Rock. 37; Rep. Ley, Ches. 9

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill creates a cause of action for persons injured by discrimination in public schools.

This bill also creates a cause of action for the attorney general in cases of discrimination in public schools.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 263 - AS AMENDED BY THE HOUSE

03/28/2019 1141s
03/28/2019 1290s
8May2019... 1690h

19-0995
08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to anti-discrimination protection for students in public schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
2 section 37 the following new subdivision:

3 Discrimination in Public Schools

4 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
5 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
6 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
7 national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a
8 discriminatory practice prohibited under this section, including the attorney general, may initiate a
9 civil action against a school or school district in superior court for legal or equitable relief, or with
10 the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

11 193:39 Discrimination Prevention Policy Required. Each school district and chartered public
12 school shall develop a policy that guides the development and implementation of a coordinated plan
13 to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the
14 basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status,
15 disability, religion, national origin, or any other classes protected under RSA 354-A.

16 2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
17 Amend RSA 354-A by inserting after section 26 the following new subdivision:

18 Opportunity for Public Education Without Discrimination a Civil Right

19 354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No person
20 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
21 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
22 status, familial status, disability, religion or national origin, all as defined in this chapter.

23 354-A:28 Procedure on Public School Complaints.

24 I. Any person claiming to be aggrieved by a discriminatory practice prohibited under RSA
25 354-A:27 may initiate a civil action in superior court against a school or school district for legal or
26 equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The attorney
27 general may also initiate such a civil action in superior court or by complaint with the commission.

28 II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
29 be subject to the procedures outlined in this chapter, with the exception that such complaints may
30 be removed to superior court at any time in compliance with RSA 508:4

SB 263 - AS AMENDED BY THE HOUSE

- Page 2 -

1 3 Effective Date. This act shall take effect 60 days after its passage.

Committee Report

REGULAR CALENDAR

April 30, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Education to which
was referred SB 263,**

**AN ACT relative to anti-discrimination protection for
students in public schools. Having considered the same,
report the same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. David Luneau

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Education
Bill Number:	SB 263
Title:	relative to anti-discrimination protection for students in public schools.
Date:	April 30, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-1690h

STATEMENT OF INTENT

This bill extends New Hampshire's civil rights statute to participation in activities and benefits offered by public schools, and prohibits exclusion on the basis of age, sex, gender identity, race, creed, color, marital status, familial status, disability, national origin, or any other classes protected under the state's civil rights act. The bill stems from the Governor's Advisory Council on Diversity and Inclusion. The amendment adds sections to the civil rights act to guarantee the right to an opportunity for public education without discrimination and the procedure to seek equitable relief through superior court.

Vote 11-7.

Rep. David Luneau
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Education

SB 263, relative to anti-discrimination protection for students in public schools. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: OUGHT TO PASS WITH AMENDMENT.**

Rep. David Luneau for the **Majority** of Education. This bill extends New Hampshire's civil rights statute to participation in activities and benefits offered by public schools, and prohibits exclusion on the basis of age, sex, gender identity, race, creed, color, marital status, familial status, disability, national origin, or any other classes protected under the state's civil rights act. The bill stems from the Governor's Advisory Council on Diversity and Inclusion. The amendment adds sections to the civil rights act to guarantee the right to an opportunity for public education without discrimination and the procedure to seek equitable relief through superior court. **Vote 11-7.**

COMMITTEE REPORT

Luneau

COMMITTEE: Education

BILL NUMBER: SB 263

TITLE: Relative to anti-discrimination protection for students in public schools.

DATE: 4/30/19 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
<u>1690h</u>

STATEMENT OF INTENT:

Johnston, Judith

From: Dave Luneau <dluneauh@gmail.com>
 Sent: Tuesday, April 30, 2019 2:22 PM
 To: Johnston, Judith
 Cc: Mel Myler
 Subject: SB 263 committee report

SB 263 OTPA

This bill extends New Hampshire's civil rights statute to participation in activities and benefits offered by public schools, and prohibits exclusion on the basis of age, sex, gender identity, race, creed, color, marital status, familial status, disability, national origin, or any other classes protected under the state's civil rights act. The bill stems from the Governor's Advisory Council on Diversity and Inclusion. The amendment adds sections to the civil rights act to guarantee the right to an opportunity for public education without discrimination and the procedure to seek equitable relief through superior court.

COMMITTEE VOTE: 11-7

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. _____
For the Committee

Rep. Myler, Merr. 10
Rep. Le, Rock. 31
April 29, 2019
2019-1690h
08/04

Amendment to SB 263

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
4 section 37 the following new subdivision:

5

Discrimination in Public Schools

6 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
7 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
8 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
9 national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a
10 discriminatory practice prohibited under this section, including the attorney general, may initiate a
11 civil action against a school or school district in superior court for legal or equitable relief, or with
12 the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

13 193:39 Discrimination Prevention Policy Required. Each school district and chartered public
14 school shall develop a policy that guides the development and implementation of a coordinated plan
15 to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the
16 basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status,
17 disability, religion, national origin, or any other classes protected under RSA 354-A.

18 2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
19 Amend RSA 354-A by inserting after section 26 the following new subdivision:

20

Opportunity for Public Education Without Discrimination a Civil Right

21

22 354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No person
23 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
24 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
25 status, familial status, disability, religion or national origin, all as defined in this chapter.

25

354-A:28 Procedure on Public School Complaints.

26

27 I. Any person claiming to be aggrieved by a discriminatory practice prohibited under RSA
28 354-A:27 may initiate a civil action in superior court against a school or school district for legal or
29 equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The attorney
30 general may also initiate such a civil action in superior court or by complaint with the commission.

30

31 II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
be subject to the procedures outlined in this chapter, with the exception that such complaints may

Amendment to SB 263

- Page 2 -

- 1 be removed to superior court at any time in compliance with RSA 508:4
- 2 3 Effective Date. This act shall take effect 60 days after its passage.

REGULAR CALENDAR

April 30, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Education to which
was referred SB 263,**

**AN ACT relative to anti-discrimination protection for
students in public schools. Having considered the same,
and being unable to agree with the Majority, report with
the following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Glenn Cordelli

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Education
Bill Number:	SB 263
Title:	relative to anti-discrimination protection for students in public schools.
Date:	April 30, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-1717h

STATEMENT OF INTENT

We are all concerned with providing anti-discrimination protections for our students and this is important legislation. The problem is that this amended bill raises many critical issues that need restitution. It opens pathways for any person (not just student) who feels aggrieved to go to the Human Rights Commission or directly to the courts. We believe this will open every school to defending lawsuits - and the School Boards Association agrees. This also expands the role of the Human Rights Commission into education - are they prepared for that responsibility? There are implications for athletics as well with the addition of "gender identity" as a protected class. What will this mean for Title IX requirements? How will "discriminatory practice" be interpreted - there is no definition and this is just one instance of language issues. The placement of the bill language into our statutes also raises issues relating to public accommodations and conflicting statutes about private rights of action. The minority believes that civil rights in education is important and that we need to get it right, and not open our schools to unnecessary problems and expenses. An amendment was offered to make this a study committee but ended in a tie vote. It is being offered as a floor amendment. The study committee can take the time to look into all the many important issues. This is too important to just pass legislation for legislation sake. Let's resolve the issues to protect students and schools. Let's resolve the bill issues and get it right.

Rep. Glenn Cordelli
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Education

SB 263, relative to anti-discrimination protection for students in public schools. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Glenn Cordelli for the **Minority** of Education. We are all concerned with providing anti-discrimination protections for our students and this is important legislation. The problem is that this amended bill raises many critical issues that need restitution. It opens pathways for any person (not just student) who feels aggrieved to go to the Human Rights Commission or directly to the courts. We believe this will open every school to defending lawsuits - and the School Boards Association agrees. This also expands the role of the Human Rights Commission into education - are they prepared for that responsibility? There are implications for athletics as well with the addition of "gender identity" as a protected class. What will this mean for Title IX requirements? How will "discriminatory practice" be interpreted - there is no definition and this is just one instance of language issues. The placement of the bill language into our statutes also raises issues relating to public accommodations and conflicting statutes about private rights of action. The minority believes that civil rights in education is important and that we need to get it right, and not open our schools to unnecessary problems and expenses. An amendment was offered to make this a study committee but ended in a tie vote. It is being offered as a floor amendment. The study committee can take the time to look into all the many important issues. This is too important to just pass legislation for legislation sake. Let's resolve the issues to protect students and schools. Let's resolve the bill issues and get it right.

Original: House Clerk

Cc: Committee Bill File

MINORITY REPORT

COMMITTEE: Education

BILL NUMBER: SB263

TITLE: Relative to anti-discrimination protection for students in public schools.

DATE: 4/30 CONSENT CALENDAR: YES NO

OUGHT TO PASS

~~OUGHT TO PASS~~ W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
1690h

2019-1717h

STATEMENT OF INTENT:

We are all concerned with providing anti-discrimination protections for our students, and this is important legislation. The problem is that this amended bill raises many critical issues that need resolution. It opens a pathways for any person (not just student) who feels aggrieved can go to the Human Rights Commission or directly to the courts. We believe this will open every school to defending lawsuits - and the School Boards Association agrees. This also expands the role of the Human Rights Commission into education - are they prepared for that responsibility? (over)

COMMITTEE VOTE: 11-7

• Copy to Committee Bill File

RESPECTFULLY SUBMITTED,

Rep. Glenn Cordelli
For the Minority

There are implications for athletics as well with the addition of "gender identity" as a protected class. What will this mean for Title IX requirements. ~~What will~~ How will "discriminatory practice" be interpreted - there is no definition, and this is just one instance of language issues.

The placement of the bill language into our RSA, also raises issues relating to public accommodations and conflicting statutes about private rights of action

The minority believes that civil rights in education is important ~~and~~ ^{and} that we need to get it right, and not open our schools to unnecessary problems and expenses. An amendment was offered to make this ~~is~~ a study committee but ended in a tie vote. It is being offered as a floor amendment. The study committee can take the time to look into all the many ^{important} issues. This is too important to just pass legislation for legislation sake. Let's resolve the issues to protect students and schools. Let's resolve the bill issues and get it right.

Rep. Ladd, Graf. 4
Rep. Cordelli, Carr. 4
April 29, 2019
2019-1717h
08/04

Amendment to SB 263

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing a committee to study anti-discrimination protection for students in
4 public schools.

5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Committee Established. There is established a committee to study ways to provide anti-
9 discrimination protection for students in New Hampshire public schools in fulfillment of the
10 provisions of the constitution of this state concerning civil rights.

11 2 Membership and Compensation.

12 I. The members of the committee shall be as follows:

13 (a) Five members of the house of representatives, appointed by the speaker of the house
14 of representatives.

15 (b) Two members of the senate, appointed by the president of the senate.

16 II. Members of the committee shall receive mileage at the legislative rate when attending to
17 the duties of the committee.

18 3 Duties. The committee's study shall include, but not be limited to:

19 I. A review of RSA 354-A, the "Law Against Discrimination," by integrating education
20 discrimination legislation as a student civil right provision in public schools.

21 II. Defining unlawful discriminatory practices and the legal standard for education
22 discriminatory practice in private right of action.

23 III. A review the powers of the state commission for human rights, including any powers
24 relative to education and the effects of the removal of those responsibilities from the department of
25 education.

26 IV. Identifying necessary or available resources the commission for human rights may
27 require to review and adjudicate education discrimination actions in public schools.

28 V. A review of the Title IX implications of and the effects of discrimination legislation based
29 on disability, sexual orientation, and gender identity on interscholastic athletic programs.

30 VI. The documentation of school district and New Hampshire Interscholastic Athletic
31 Association policies on accommodation for transgender students in interscholastic athletic programs
32 with consideration given to anti-discrimination practice exemptions for fair competition and safety

Amendment to SB 263

- Page 2 -

1 protections pursuant to New Hampshire Interscholastic Athletic Association eligibility guidelines
2 and procedures that govern student participation in public school interscholastic activities and
3 athletics.

4 VII. The research of any pending or recent cases to the commission for human rights from
5 any public or nonpublic school student or staff and the discrimination grounds and any pending or
6 recent cases to the superior court.

7 VIII. The comparison including but not limited to costs, outcomes, and length of process for
8 complainants seeking resolution of discrimination complaints through the commission for human
9 rights and the superior court.

10 IX. The review proper statutory placement for any new anti-discrimination protection.

11 X. The review and consideration of anti-discrimination education protections and systems
12 implemented in other states.

13 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
14 among the members. The first meeting of the committee shall be called by the first-named house
15 member. The first meeting of the committee shall be held within 45 days of the effective date of this
16 section. Four members of the committee shall constitute a quorum.

17 5 Report. The committee shall report its findings and any recommendations for proposed
18 legislation to the speaker of the house of representatives, the president of the senate, the house
19 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

20 6 Effective Date. This act shall take effect upon its passage.

Amendment to SB 263

- Page 3 -

2019-1717h

AMENDED ANALYSIS

This bill establishes a committee to study anti-discrimination protection for students in public schools.

Voting Sheets

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: April 30, 2019

LOB ROOM: 207

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Luneau Seconded by Rep. Ellison AM Vote: 11-8

Amendment # 2019-1690h

Moved by Rep. Doherty Seconded by Rep. Ellison Vote: 11-7

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Handwritten signature of Linda Tanner in cursive script.

Rep Linda Tanner, Clerk

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 4/30/

LOB ROOM: 207

MOTION: (Please check one box)

Amendment

OTP ITL Retain (1st year) Adoption of Amendment # 2019-1090h (if offered) Interim Study (2nd year)

Moved by Rep. Lunnar Secoded by Rep. Ellison Vote: 11-8

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # 1717h (if offered) Interim Study (2nd year)

Moved by Rep. Cordell Secoded by Rep. LeKas Vote: 9-9

MOTION: (Please check one box) MAIN Motion

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # (if offered) Interim Study (2nd year)

Moved by Rep. Doherty Secoded by Rep. Ellison Vote: 11-7

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # (if offered) Interim Study (2nd year)

Moved by Rep. Secoded by Rep. Vote:

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: Cordelli Motion 11-7

Respectfully submitted: Linda A. Tanner Rep Linda Tanner, Clerk

2019 SESSION

Education

Bill #: 8263 Motion: OTP AM #: 1717h Exec Session Date: 4/30Relative to anti-discrimination protection for students in public schools. Members

	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Myler, Mel Chairman		9	
Luneau, David J. Vice Chairman	—		
Shaw, Barbara E.	1		
Cornell, Patricia <u>WOODS</u>		1	
Doherty, David B.		2	
Le, Tamara N.		3	
Tanner, Linda L. Clerk		4	
Ellison, Arthur S.		5	
Mullen, Sue M.		6	
Riel, Cole J.		7	
Vallone, Mark	—		
Woodcock, Stephen L.		8	
Ladd, Rick M.	2		
Cordelli, Glenn	3		
Elliott, Robert J. <u>Hoelzel</u>	4		
Boehm, Ralph G.	5		
Wolf, Dan H.	6		
Allard, James C.	7		
Forsythe, Robert L.	8		
Lekas, Alicia D.	9		
TOTAL VOTE:	9	9	



2019 SESSION

Education

Amendment

Bill #: ^{SB} 263 Motion: OTP AM #: 1690h Exec Session Date: 4/30/19

Relative to anti-discrimination protection for students in public schools.

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Myler, Mel Chairman	11	1	
Luneau, David J. Vice Chairman	1		
Shaw, Barbara E.	2		
Cornell, Patricia <i>WOODS</i>	3		
Doherty, David B.	4		
Le, Tamara N.	5		
Tanner, Linda L. Clerk	6		
Ellison, Arthur S.	7		
Mullen, Sue M.	8		
Riel, Cole J.	9		
Vallone, Mark	-		
Woodcock, Stephen L.	10		
Ladd, Rick M.		1	
Cordelli, Glenn		2	
Elliott, Robert J. <i>Hoelzel</i>		3	
Boehm, Ralph G.		4	
Wolf, Dan H.		5	
Allard, James C.		6	
Forsythe, Robert L.		7	
Lekas, Alicia D.		8	
TOTAL VOTE:	11	8	



2019 SESSION

Education

Bill #: SB 263 Motion: OTP-A AM #: 1690h Exec Session Date: 1/30

Relative to anti-discrimination protection for students in public schools.

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Myler, Mel Chairman	11		
Luneau, David J. Vice Chairman	—		
Shaw, Barbara E.	1		
Cornell, Patricia <i>woods</i>	2		
Doherty, David B.	3		
Le, Tamara N.	4		
Tanner, Linda L. Clerk	5		
Ellison, Arthur S.	6		
Mullen, Sue M.	7		
Riel, Cole J.	8		
Vallone, Mark	—		
Woodcock, Stephen L.	9		
Ladd, Rick M.		1	
Cordelli, Glenn		2	
Elliott, Robert J. <i>Hoelzel</i>		3	
Boehm, Ralph G.		4	
Wolf, Dan H.	10		
Allard, James C.		5	
Forsythe, Robert L.		6	
Lekas, Alicia D.		7	
TOTAL VOTE:	11	7	

Rep. Ladd, Graf. 4
Rep. Cordelli, Carr. 4
April 29, 2019
2019-1717h
08/04

Amendment to SB 263

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing a committee to study anti-discrimination protection for students in
4 public schools.

5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Committee Established. There is established a committee to study ways to provide anti-
9 discrimination protection for students in New Hampshire public schools in fulfillment of the
10 provisions of the constitution of this state concerning civil rights.

11 2 Membership and Compensation.

12 I. The members of the committee shall be as follows:

13 (a) Five members of the house of representatives, appointed by the speaker of the house
14 of representatives.

15 (b) Two members of the senate, appointed by the president of the senate.

16 II. Members of the committee shall receive mileage at the legislative rate when attending to
17 the duties of the committee.

18 3 Duties. The committee's study shall include, but not be limited to:

19 I. A review of RSA 354-A, the "Law Against Discrimination," by integrating education
20 discrimination legislation as a student civil right provision in public schools.

21 II. Defining unlawful discriminatory practices and the legal standard for education
22 discriminatory practice in private right of action.

23 III. A review the powers of the state commission for human rights, including any powers
24 relative to education and the effects of the removal of those responsibilities from the department of
25 education.

26 IV. Identifying necessary or available resources the commission for human rights may
27 require to review and adjudicate education discrimination actions in public schools.

28 V. A review of the Title IX implications of and the effects of discrimination legislation based
29 on disability, sexual orientation, and gender identity on interscholastic athletic programs.

30 VI. The documentation of school district and New Hampshire Interscholastic Athletic
31 Association policies on accommodation for transgender students in interscholastic athletic programs
32 with consideration given to anti-discrimination practice exemptions for fair competition and safety

Amendment to SB 263

- Page 2 -

1 protections pursuant to New Hampshire Interscholastic Athletic Association eligibility guidelines
2 and procedures that govern student participation in public school interscholastic activities and
3 athletics.

4 VII. The research of any pending or recent cases to the commission for human rights from
5 any public or nonpublic school student or staff and the discrimination grounds and any pending or
6 recent cases to the superior court.

7 VIII. The comparison including but not limited to costs, outcomes, and length of process for
8 complainants seeking resolution of discrimination complaints through the commission for human
9 rights and the superior court.

10 IX. The review proper statutory placement for any new anti-discrimination protection.

11 X. The review and consideration of anti-discrimination education protections and systems
12 implemented in other states.

13 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
14 among the members. The first meeting of the committee shall be called by the first-named house
15 member. The first meeting of the committee shall be held within 45 days of the effective date of this
16 section. Four members of the committee shall constitute a quorum.

17 5 Report. The committee shall report its findings and any recommendations for proposed
18 legislation to the speaker of the house of representatives, the president of the senate, the house
19 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

20 6 Effective Date. This act shall take effect upon its passage.

Amendment to SB 263

- Page 3 -

2019-1717h

AMENDED ANALYSIS

This bill establishes a committee to study anti-discrimination protection for students in public schools.

Rep. Myler, Merr. 10
Rep. Le, Rock. 31
April 29, 2019
2019-1690h
08/04

Amendment to SB 263

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
4 section 37 the following new subdivision:

5

Discrimination in Public Schools

6 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
7 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
8 gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or
9 national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a
10 discriminatory practice prohibited under this section, including the attorney general, may initiate a
11 civil action against a school or school district in superior court for legal or equitable relief, or with
12 the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

13 193:39 Discrimination Prevention Policy Required. Each school district and chartered public
14 school shall develop a policy that guides the development and implementation of a coordinated plan
15 to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the
16 basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status,
17 disability, religion, national origin, or any other classes protected under RSA 354-A.

18 2 New Subdivision; Opportunity for Public Education Without Discrimination a Civil Right.
19 Amend RSA 354-A by inserting after section 26 the following new subdivision:

20

Opportunity for Public Education Without Discrimination a Civil Right

21 354-A:27 Opportunity for Public Education Without Discrimination a Civil Right. No person
22 shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in
23 public schools because of their age, sex, gender identity, sexual orientation, race, color, marital
24 status, familial status, disability, religion or national origin, all as defined in this chapter.

25

354-A:28 Procedure on Public School Complaints.

26

I. Any person claiming to be aggrieved by a discriminatory practice prohibited under RSA
27 354-A:27 may initiate a civil action in superior court against a school or school district for legal or
28 equitable relief, or file a complaint with the commission as provided in RSA 354-A:21. The attorney
29 general may also initiate such a civil action in superior court or by complaint with the commission.

30

II. Any complaint filed with the commission pursuant to paragraph I shall comply with and
31 be subject to the procedures outlined in this chapter, with the exception that such complaints may

Amendment to SB 263

- Page 2 -

- 1 be removed to superior court at any time in compliance with RSA 508:4
- 2 3 Effective Date. This act shall take effect 60 days after its passage.

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: April 18, 2019

LOB ROOM: 207

RECESSED TO APRIL 30, 2019 AT 10:00 A.M.

SUBCOMMITTEE MEETING APRIL 23, 2019 IN ROOM 212 AT 1:00 P.M.

SUBCOMMITTEE HEARING AMENDMENT ONLY

**PROPOSED 2 AMENDMENTS 1539h - Rep. Myler
1509h - Rep. Le**

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda L. Tanner".

Rep Linda Tanner, Clerk

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 4/18/14

LOB ROOM: 207

Recess to 4/30/14
Luneau Le Vasseur
LADD ALARD
Sub Committee
HEARINGS Amendment only
PROPOSED 2 Amendments 1539h Myler
1509h Le

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

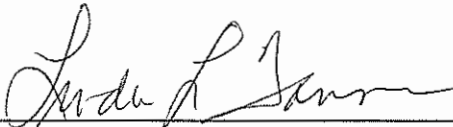
MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES _____ NO

Minority Report? _____ Yes _____ No If yes, author, Rep: _____ Motion _____

Respectfully submitted: 
Rep Linda Tanner, Clerk

Sub-
Committee
Actions

HOUSE COMMITTEE ON EDUCATION

SUBCOMMITTEE WORK SESSION on SB 263

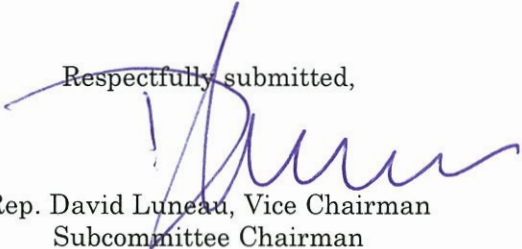
BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: April 23, 2019

Subcommittee Members: Reps. Le, Luneau, Mullen, Ladd and Allard

Comments and Recommendations: Draft Amendment by Rep. Myler, Le and Sherman.

Respectfully submitted,



Rep. David Luneau, Vice Chairman
Subcommittee Chairman

HOUSE COMMITTEE ON EDUCATION

SUBCOMMITTEE WORK SESSION on SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: April 23, 2019 ✓

Subcommittee Members: Reps. Luneau, Le, Mullen, Ladd and Allard



Comments and Recommendations:

DRAFT AMENDMENT BY MYLER, LE, SHORMAN

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

Respectfully submitted,

Rep. _____
Subcommittee Chairman/Clerk

Hearing Minutes

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: April 10, 2019

LOB ROOM: 207
1:00 p.m.

Time Public Hearing Called to Order: 11:00 a.m. -

1:25 p.m.

Time Adjourned: 12:20 p. m. -

Committee Members: Reps. Myler, Luneau, Tanner, Shaw, Cornell, Doherty, Le, Ellison, Mullen, Riel, Vallone, Woodcock, Ladd, Cordelli, Boehm, Wolf, Allard and A. Lekas

Bill Sponsors:

Sen. Sherman
Sen. Levesque
Sen. Watters
Rep. Altschiller

Sen. Fuller Clark
Sen. Rosenwald
Rep. Cannon
Rep. Janvrin

Sen. Hennessey
Sen. D'Allesandro
Rep. M. Smith
Rep. Ley

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

(1.) Sen. Tom Sherman - Sponsor - Supports

- Diversity and Inclusion Governor's Commission
- Heard persistent inequity
- Bullying
- Segregation
- NH One
- NH is the only NE states no discrimination protections in schools
- Line 9 AG may take civil action
- Passed Senate 20-3 non- partisan
- Demands a policy with this bill
-

Q: Wording issue says no person instead of student can anyone go into schools and claim services because of discrimination?

A: Never brought up on Senate side person makes it clear that once a student leaves they are still under the non- discrimination.

Q: Person issue does it apply to teachers would a person with Schizophrenia be able to teach?

A: This is under employment law.

Q: On to students in terms of sexual orientation sports cases transgender (sic) boys won track caused issues in those states for women is there protection for women?

A: I defer to others.

Q: Does NHIAA have any positions on this?

A: Don't know. This is more for fundamental school functions not athletics.

Q: Line 6/7 sounds like IDEA languages of 90's how did this phrasing exist?

A: This is from employment wording not opposed to wording changes.

(1.) Sen. Tom Sherman - Sponsor - (Continued from Page One)

Q: Gender identity and Title IX other genders where are they in the scheme?

A: Defer.

Q: Line 9 relief at law or equity?

A: So punting on that one!!

Q: Line 5 based on age public schools is that a problem?

A: Great questions don't know.

Q: Can schools set policies that effect many and not individuals?

A: Yes

Q: Is there a pattern of discrimination?

A: Advisory council persistent discrimination. Closing the last gap of protection.

(2.) *Jeanne Hruska - Political Director ACLU- NH Support - Written testimony

- ACLU has met with young people
- Students of color 2nd class citizens ignored questions lower expectations
- Guidance counselors ignoring them ostracized more discipline
- This state has a struggle with diversity and inclusion and schools are on the forefront.
- Exclusionary discipline USDOE data show discrimination students of color and special needs.
- Students had to change schools because of discrimination so you can be designated as a person
- Sports issue..transgender students ACLU article will come email
- Long legacy of discrimination in sports for women
- Discussion all day on how to make sports equitable
- We don't have non discrimination protections in schools.
-

Q: Is this similar to other states?

A: Yes.,

Q: Bedford had a girl place kicker were there complaints with ACLU?

A: No.

Q: Age can be restricted if it applies equally to all?

A: Yes.

Q: Line 5-7 mentions religion does this apply to beliefs/opinion for instance term papers reading Bible in class?

A: What you asked is protected already is singling them out.

Q: Listening session information available?

A: Anonymous feedback notes were taken may have numbers it was an open discussion..read the report.

Q: Title IX do you have to programs from non binary?

A: No but can't exclude.

(3.) Rep. Gerri Cannon - Supports

- Kids want to be in school and treated fairly
- Feel comfortable to get a good education
- There have been challenges and we need to work it out with students

(3.) Rep. Gerri Cannon - Supports - (Continued from Page Two)

- Restrooms are an issue in schools..have a bathroom that is non gender identified
- Gives personal story about growing up school with bullying and discrimination.
-

Q: Would a school that didn't have a non gender bathroom be sued?

A: Schools and people need to work it through.

(4.) Rep. Tim Horrigan - Supports

- Wants to point out needs to include charters etc.
- Bathrooms are an issue even for cis people who show other characteristics
- Treat all decently
- Often its people outside the school, not the students who object to trans students.

(5.) Allyson Ryder - Governor's Advisory Council on Diversity and Inclusion -Supports

- Education system who identify as an minority feels excluded non discrimination
- In NH only resolve is with Federal Title IX lawsuit
- More student to adult rather than student to student
-

Q: If a counselor had suggested to a minority a lesser college where do they get resolution?

A: Human rights commission or Title IX.

Q: Does that apply to a poor child is discriminated against?

A: 354-A language is not explicit to economic status.

Q: Describe advisory council?

A: 2017 attempted lynching in Claremont.. other public awareness the governor appointed 4 public members ACLU correction, safety HHS NAACP Dept of Labor chiefs of police 18 people has two more listening sessions.

Q: What is the efficiency of human right Commission to service complaints?

A: Needs more people to take cases add Atty. General to file claims..how can we help the school to rectify the situation rather than suits.

Q: Would this bill strengthen this process?

A: This bill is not connected to that action.

Q: Can receive the link to commission?

A: Yes.

Q: Discriminatory practices any discussion in Commission on people who are going into trade?

A: Not recall specifically. Vocational Ed was not discussed.

Q: Students in vocational programs who are bullied for that is this in the bill?

A: This bill is more on adult to student problems rather than bullying that is other laws.

Q: Would commission be receptive to include this area?

A: Yes.

(6.) * Christopher Jay, Attorney with Cornerstone Action. Opposes bill

- Age discrimination need good reason for that separations
- Sports sex and gender identity as protected classes
- Title IX sports sex segregated sports equitable funding and equal opportunity

(6.) *Christopher Jay, Attorney with Cornerstone Action (Continued from Page Three)

- Apply T-9 to this bill is the school required to make a distinct league for each gender identity
- Consider this implication from this bill and how it relates to sports.

Q: Right now we have integrated sports why wouldn't it be the same?

A: I believe they would need a separate gender identity sports team.

Q: Have you checked with NHIAA for what is current practice?

A: No

Q: If gender identity person was only person for a sport would they have to make a team?

A: Don't know, maybe.

Q: Investigation and feels aggrieved starts a civil action are different can apply for equity relief what difference in civil action and relief?

A: Different things make complaint to commission rather than law where individual brings legal action.

(7.) Emily Galeva. Student

- Was presenter at youth summit. On sex/gender issues
- Kids get bullied all the time rumors spread pretty rapidly effects their education
- Wants all gender bathrooms in all schools for everyone one stall bathroom priority
- Not segregation just Another option for students.
-

Q: How long have you had the bathrooms at what school?

A: Lebanon High School have had them for at least 4 years.

Q: At youth summit? At part that discussed these issues? Do you think this should be a law?

A: Yes, yes, yes.

Q: Is this specific to bathrooms issues or other issues?

A: Not a big deal on sports at my school.

(8.) *Barrett Christina - NHSBA - Oppose - See handout for specific issues

- No position on classes for protection
- Concern is line 7 refers definition in 354-a but are not defined there
- Primary opposition 8-11 creates new mechanism to liability and financial issues for Local SB
- Should be a forum or mechanism at the State level rather than at the Federal level
- Opens school boards and taxpayers to financial issues in litigation
- 193-F is bullying statute not necessarily non discrimination
- NHSBA every kid is guaranteed a safe place to learn is primary goal of local school boards.

Q: Is it position of NHSBA that this is sufficient to deal with the areas from commission?

A: We don't have a position on the protected classes.

Q: If there is liability on school boards part shouldn't they pay the price?

A: There should be a consequence there is redress under federal law with civil rights in Boston
If we expand the classes of protection, federal law doesn't cover all the non discrimination that NH does.

Q: If Federal classes are breached, Boston office is a challenge shouldn't the place to appeal in NH?

A: Not happy about superior court route. Is it law, or equity injunctions policies training.

Q: Are all these non discrimination in your handout?

1. SB 263 - Page Five

(8.) *Barrett Christina - NHSBA - (Continued from Page Four)

A: No.

Q: Do we need to add the categories?

A: Yes but clean up the area.

Q: Last line benefits of Education Programs, or activities based on economic status?

A: Added a while ago.

Q: Who pays the liability suits?

A: Insurance, but bottom line is taxpayer.

Q: Line 7 person aggrieved can go directly to superior court?

A: Yes superior court of the AG's office.

Q: Line 14-19 wrong area of statute where should it go?

A: 186, 189, 193 maybe.

Q: Would Governor's Scholarship only goes to colleges not vocational training does this address this discrimination?

A: Opens up places for lawsuits.

(9.) Jerry Frew - NHSAA - Opposes

- Worried about liability at local school districts who would defend the aggrieved action.

Q: Do you think the current law addresses the issues reported in the Commission?

A: I don't believe so.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Linda Tanner", written in a cursive style.

Rep. Linda Tanner, Clerk

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON SB 263

BILL TITLE: relative to anti-discrimination protection for students in public schools.

DATE: 4/10/19

Recess @ 12:20 - 1:00

ROOM: 207

Time Public Hearing Called to Order: 11:00 - 1:00

Time Adjourned: 1:25

(please circle if present)

Committee Members: Reps. Myler, Luneau, Tanner, Shaw, Cornell, Doherty, Le, Ellison, Mullen, Riel, Vallone, Woodcock, Ladd, Cordelli, Elliott, Boehm, Wolf, Allard, Forsythe and A. Lekas

Bill Sponsors:

Sen. Sherman
Sen. Levesque
Sen. Watters
Rep. Altschiller

Sen. Fuller Clark
Sen. Rosenwald
Rep. Cannon
Rep. Janvrin

Sen. Hennessey
Sen. D'Allesandro
Rep. M. Smith
Rep. Ley

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- 1 Sen Tom Sherman sponsor
2 Jeanne HEUSKA ACLU Support
3 Terri Cannon State Rep Support
4 Tim Harrigan State Rep Support
5 Allison Ryder Support
6 Chris Jay Atty Cornerstone Not Support
7 Emily Galeva Student Support
8 Barrett Christina NHTSBA Oppose
7 Jerry Frew NHTSAA Oppose

Johnston, Judith

From: LT <tannerwindom@gmail.com>
Sent: Wednesday, April 10, 2019 3:43 PM
To: Johnston, Judith
Subject: 4.10.19 SB263

4.10.19 SB263

Sen Tom Sherman sponsor

Diversity and Inclusion Governor's Commission

Heard persistent inequity

Bullying

Segregation

NH One

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? Can schools set policies that effect many and not individuals .. Ansyes

? Is there a pattern of discrimination ...Ans advisory council persistent discrimination

Closing the last gap of protection

Jeanne Housman ACLU. Support

ACLU has met with young people

Students of color 2nd class citizens ignored questions lower expectations

Guidance counselors ignoring them ostracized more discipline

This state has a struggle with diversity and inclusion and schools are on the forefront.

Exclusionary discipline USDOE data show discrimination students of color and special needs.

Students had to change schools because of discrimination so you can be designated as a person

Sports issue..transgender students ACLU article will come email

Long legacy of discrimination in sports for women

Discussion all day on high to make sports equitable

We dont have non discrimination protections in schools

?is this similar to other states Ans yes

?bedford had a girl place kicker were there complaints with aclu Ans no

?age can be restricted if it applies equally to all..ans yes

?line 5-7 mentions religion does this apply to beliefs/opinion for instance term papers reading Bible in class Ans. What you asked is protected already is singling them out
?Listening session information available. ANS anonymous feedback notes were taken may have numbers it was an open discussion..read the report
?Title IX do you have to programs from non binary..no but cant exclude

Rep Gerri Canon. Support

Kids want to be in school and treated fairly

Feel comfortable to get a good education

There have been challenges and we need to work it out with students

Restroom are an issue in schools..have a bathroom that is non gender identified

Gives personal story about growing up school with bullying and discrimination

?would a school that didn't have a non gender bathroom be sued. Ans schools and people need to work it through

Rep Tim Horrigan support

Wants to point out needs to include charters etc.

Bathrooms are an issue even for cis people who show other characteristics

Treat all decently

Often its people outside the school not the students who object to trans students

Allyson Ryder. Governor's advisory council on diversity and inclusion

Ed system who identify as an minority feels excluded non discrimination

In NH only resolve is with Federal Title IX lawsuit

More student to adult rather than student to student

Guidance /activities exclusions

?if a counselor had suggested to a minority a lesser college where do they get resolution ans human rights commission or Title IX

?does that apply to a poor child is discriminated against ans 354-A language is not explicit to economic status

?describe advisory council. Ans 2017 attempted lynching in Claremont.. other public awareness the governor appointed 4 public members ACLU correction, safety HHS NAACP Dept of Labor chiefs of police 18 people has two more listening sessions

?what is the efficiency of human right Commission to service complaints. Ans needs more people to take cases add Atty General to file claims..how can we help the school to rectify the situation rather than suits

?would this bill strengthen this process..ans this bill is not connected to that action

?can receive the link to commission ans yes

?discriminatory practices any discussion in Commission on people who are going into trades. Ans not recall specifically. Vocational ed was not discussed

?students in vocational programs who are bullied for that is this in the bill ANS this bill is more on adult to student problems rather than bullying that is other laws

?would commission would be receptive to include this area..ans yes

Christopher Jay Atty Cornerstone. Does not support

Age discrimination.need good reason for that separations

Sports sex and gender identity as protected classes

Title IX sports sex segregated sports equitable funding and equal opportunity

Apply T-9 to this bill is the school required to make a distinct league for each gender identity

Consider this implication from this bill and how it relates to sports

? Right now we have integrated sports why wouldn't it be the same ans I believe they would need a separate gender identity sports team

? Have you checked with NHIAA for what is current practice Ans no

? If gender identity person was only person for a sport would they have to make a team..Ans dont know maybe

? Investigation and feels aggrieved starts a civil action are different can apply for equity relief what difference in civil action and relief..Ans different things make complaint to commission rather than law where individual brings legal action

Emily Galeva. Student

Was presenter at youth summit. On sex/gender issues

Kids get bullied all the time rumors spread pretty rapidly effects their education

Wants all gender bathrooms in all schools for everyone one stall bathroom priority

Not segregation just Another option for students

?how long have you had the bathrooms at what school Ans Leb HS have had them for at least 4 years

?at youth summit? At part that discussed these issues? do you think this should be a law ans yes, yes, yes

? Is this specific to bathrooms issues or other issues. Ans not a big deal on sports at my school

Barrett Christina NHSBA. Oppose. see handout for specific issues

No position on classes for protection

Concern is line 7 refers definition in 354-a but are not defined there

Primary opposition 8-11 creates new mechanism to liability and financial issues for Local SB

Should be a forum or mechanism at the State level rather than at the Federal level

Opens school boards and taxpayers to financial issues in litigation

193-F is bullying statute not necessarily non discrimination

NHSBA every kid is guaranteed a safe place to learn is primary goal of local school boards.

?is it position of NHSBA that this is sufficient to deal with the areas from commission ans we dont have a position on the protected classes

? If there is liability on school boards part shouldn't they pay the price Ans there should be a consequence there is redress under federal law with civil rights in Boston

If we expand the classes of protection, federal law doesn't cover all the non discrimination that NH does.

?if federal classes are breached, Boston office is a challenge shouldn't the place to appeal in NH ANS not happy about superior court route. Is it law or equity injunctions policies training

?Are all these non discrimination in your handout ANS no

? Do we need to add the categories ANS yes but clean up the area

? Last line benefits of ed. Programs or activities based on economic status ANS added a while ago

? Who pays the liability suits. Ans insurance but bottom line is taxpayer

?line 7 person aggrieved can go directly to superior court ANS yes superior court of the AG's office

?line 14-19 wrong area of statute where should it go. Ans 186 189 193 maybe

? Would gov. Scholarship only goes to colleges not vocational training does this address this discrimination ANS opens up places for lawsuits

Jerry Frew NHSAA

Worried about liability at local school districts who would defend the aggrieved action

?do you think the current law addresses the issues reported in the Commission ANS I dont believe so

Linda Tanner

"Unless someone like you cares a whole awful lot,
Nothing is going to get better. It's not."

— Dr. Seuss, *The Lorax*

11:00 AM

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 263 Date April 10, 2019
 Committee Education

**** Please Print All Information ****

Z1 +

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Senator Fuller Clark			SD #21	<input checked="" type="checkbox"/>	
Sen. Cindy Rosenwald			SD #13	<input checked="" type="checkbox"/>	
Melissa Hinebauch	Concord		self	<input checked="" type="checkbox"/>	
Megan Tuttle	Concord		NRA-NH	<input checked="" type="checkbox"/>	
Rep Dick Hinch	House Republican Office				<input checked="" type="checkbox"/>
Deborah Jakubowski			Self	<input checked="" type="checkbox"/>	
SUSAN COVERZ	31 COTTAGE CONZOOCK		SELF	<input checked="" type="checkbox"/>	
Lucy Cridtar	Concord		self	<input checked="" type="checkbox"/>	
Dennis Jakubowski	Lebanon		Self	<input checked="" type="checkbox"/>	
Maura willing	Concord		self	<input checked="" type="checkbox"/>	
Olivia Noni	Nottingham		self	<input checked="" type="checkbox"/>	
Senator Tom Sherman	Rye		District 24	<input checked="" type="checkbox"/>	
Christopher Jay	Manchester		Cornerstone, NH	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Jennifer Smith	Pembroke, NH		Self	<input checked="" type="checkbox"/>	
Rep. Debra Altschuler	Stratham		Rockingham 19	<input checked="" type="checkbox"/>	
Dawn McKinney			NH Legal Assistance	<input checked="" type="checkbox"/>	
Dottie Morris	Keene		Keene State	<input checked="" type="checkbox"/>	
Sen. Tom Sherman			SP24	<input checked="" type="checkbox"/>	
Hershey Hiroch Kap	Portsmouth		Seacoast tonight	<input checked="" type="checkbox"/>	
Senator Melanie Levesque			SD #12	<input checked="" type="checkbox"/>	
Jennifer Frizzell	NH Women's Foundation			<input checked="" type="checkbox"/>	
Rep. Timothy Horrigan			St Paul School	<input checked="" type="checkbox"/>	
Jerry Freew			NH SASA		<input checked="" type="checkbox"/>
AnnMarie Bonfield			Self		<input checked="" type="checkbox"/>

continued on back

Testimony



**Statement by Jeanne Hruska, Political Director ACLU-NH
House Education Committee
Senate Bill 263
April 10, 2019**

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. I appreciate the opportunity to testify today in support of SB263, which would fill a gap in our state law by providing our students with state-level protections against discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, physical or mental disability, religion or national origin.

Granite Staters are concerned about student discrimination in New Hampshire. The ACLU is a member of the Governor's Advisory Council on Diversity and Inclusion, which was launched in December 2017 through Executive Order 2017-19. The Advisory Council spent much of last year conducting listening sessions across the state to hear directly from Granite Staters. Two issues that came up at many of the listening sessions were concerns over student discrimination and the need for racial justice, including in our public schools.

These concerns are particularly valid when we recognize that New Hampshire does not provide students with comprehensive state-level protections against discrimination. Instead, students must rely on piecemeal federal protections, which are subject to change. In the Granite State, we provide workers with protection from discrimination, making it all the more alarming that we do not provide young people with similar protections.

The incidents of racial bias that lead up to the Governor's decision to launch the Advisory Council on Diversity and Inclusion were aimed largely at and involved young people. These events came up at listening sessions, with the takeaway being that young people are on the front lines of our state's struggle to better support and promote diversity and inclusion. One of the most immediate and tangible ways we can support our young people is by providing them comprehensive legal protections against discrimination. If we do not prohibit discrimination in law, how can we expect to promote tolerance in practice?

This is why the Advisory Council on Diversity and Inclusion recommended this legislation in its December report.

A pronounced example of discrimination in our schools is the disproportionate use of exclusionary discipline. The most recent data released by the U.S. Department of Education's Office of Civil Rights demonstrates that students of color and students with disabilities are

disproportionately subjected to exclusionary discipline across our state.¹ This is not unique to one or two school districts, but rather is reflected across the whole state.

The ACLU-NH is a member of the Juvenile Reform Project, which recently released a report detailing the Office of Civil Rights' data on the racial disparities in the use of exclusionary discipline in New Hampshire. I am including a copy of that report with my testimony in order to highlight one area where data clearly demonstrates a racial disparity in our schools and to underscore the short and long-term harm imposed on students who are discriminated against in this fashion.

Briefly, the U.S. Government Accountability Office summed up the consequences of exclusionary discipline well in its report to Congress last year entitled "Discipline Disparities for Black Students, Boys, and Students with Disabilities":

Research has shown that students who experience discipline that removes them from the classroom are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system. Studies have shown this can result in decreased earning potential and added costs to society, such as incarceration and lost tax revenue.²

Now factor in the racial disparities in the use of exclusionary discipline. Students of color are disproportionately subjected to exclusionary discipline, meaning they also are disproportionately affected by the collateral consequences of such practices. In effect, the racial disparities in the use of exclusionary discipline can contribute to similar disparities in those who enter the school-to-prison pipeline and to racial inequality in education, which impacts future earning potential.³ In a state where students have a constitutional right to an adequate education, it is worth considering how the disproportionate use of exclusionary discipline against select students impairs that right.

Students of color feel like second-class citizens in our schools. Apart from the Advisory Council, the ACLU-NH has been meeting with students across the state to learn more about their experiences in the classroom. We wanted to share a couple of their experiences with you today.

When we asked a group of ten black elementary school boys in Manchester if they had ever been suspended, more than half raised their hands. They were embarrassed to talk about their suspensions in detail. They felt ashamed — like being suspended branded them as a "bad kid." These kids talked about being suspended for talking too much in class, talking back to teachers, and not following directions (which, some of them emphasized, they had not understood, as they were still learning English). Some kids were suspended for fighting too, but when pressed for details they were usually fighting because they were being bullied because of their race. They fought back when they felt like their teachers were not able to protect them or

¹ http://www.nhla.org/assets/customContent/FINAL_Keeping_Kids_in_School_-_The_Urgent_Need_to_Reform_School_Discipline_in_NH.pdf

² Discipline Disparities for Black Students, Boys, and Students with Disabilities, March 2018, <https://www.gao.gov/assets/700/690828.pdf>

³ http://crsp.pitt.edu/sites/default/files/Just%20Discipline%20and%20the%20School%20to%20Prison%20Pipeline%20in%20Pittsburgh_1.pdf

did not care to. Being suspended for perceived minor slip-ups or behaviors they felt like they could not avoid made these students feel alienated from their school community. They did not describe school as a place where they feel safe and valued, but as somewhere they feel constantly surveilled and policed, where they feel like they always have to be on the defensive.

Students of color also described the subtle, consistent everyday ways in which they are made to feel like second-class citizens. They described being scolded for using their phones or talking in class, and then watching white kids do the same thing without any consequences. They described teachers ignoring their questions in class. They described teachers in AP classes having lower expectations of them, not treating them as serious students. They described guidance counselors dismissing their concerns, not helping them change schedules, and not explaining the credit system or graduation requirements. Students shared a sense that when they or their parents brought concerns to school administrators they were ignored and dismissed because they were seen as unimportant. Students said they felt targeted by teachers because of their families, their siblings, or the way they dressed. They also described a sense that their people, their histories, were completely overlooked by school curricula.

For students of color in New Hampshire, the cumulative effect of the daily experience of feeling ignored academically, ostracized socially, and consistently, unfairly targeted for discipline is a sense of powerlessness, alienation, and despair. In effect, students of color feel like they are being pushed out of the school community and that exclusion hinders their success, undermines the goals of our education system, and contravenes our fundamental values.

In New England, New Hampshire is behind the curve in ensuring that students are protected from discrimination when they go to school. SB263 would rectify this. It would give parents and the NH Department of Justice legal recourse to respond to incidents of racial bias.

The same day on which the Governor launched the Advisory Council on Diversity and Inclusion, the NH Department of Justice announced the creation of a Civil Rights Unit. Right now, that Unit has no jurisdiction to intervene in cases of student discrimination. SB263 would rectify this.

For these reasons, the ACLU-NH respectfully urges the members of this committee to vote *ought to pass* on SB263



Mel Myler <mel.myler@gmail.com>

NHIAA Policy

2 messages

Jeffrey Collins <JCollins@nhiaa.org>
To: "mel.myler@gmail.com" <mel.myler@gmail.com>

Wed, Apr 24, 2019 at 11:10 AM

Mel,

Below is a cut and paste version of the NHIAA's policy statement regarding transgender participation in athletics. I have also attached a link to the eligibility section of the NHIAA Handbook. The transgendered policy statement can be found on Page 53 of the link.

Sect. 21: Policy Statement and School Recommendation Regarding Transgender Participation The NHIAA is committed to providing transgender student-athletes with equal opportunities to participate in NHIAA athletic programs consistent with their gender identity. Hence, this policy addresses eligibility determinations for students who have a gender identity that is different from the gender listed on their official birth certificates. The NHIAA has concluded that it would be fundamentally unjust and contrary to applicable State and Federal Law to preclude a student from participation on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. Therefore, for purposes of sports participation, the NHIAA shall defer to the determination of the student and his or her local school regarding gender identification. In this regard, the school district shall determine a student's eligibility to participate in a NHIAA gender specific sports team based on the gender identification of that student in current school records and daily life activities in the school and community at the time that sports eligibility is determined for a particular season. Accordingly, when a school district submits a roster to the NHIAA, it is verifying that it has determined that the students listed on a gender-specific sports team are entitled to participate on that team due to their gender identity, and that the school district has determined that the expression of the student's gender identity is bona fide and not for the purpose of gaining an unfair advantage in competitive athletics. Students who wish to participate on a NHIAA gender-specific sports team that is different from the gender identity listed on the student's current school records are advised to address the gender identification issue with the local school district well in advance of the deadline for athletic eligibility determinations for a current sports season. Students should not be permitted to participate in practices or to try out for gender specific sports teams that are different from their publicly identified gender identity at that time or to try out simultaneously for NHIAA sports teams of both genders. Nothing in this policy shall be read to entitle a student to selection to any particular team or to permit a student to transfer from one gender specific team to a team of a different gender during a sports season. In addition, the NHIAA shall expect that, as a general matter, after the issue of gender identity has been explicitly addressed by the student and the school district, the determination shall remain consistent for the remainder of the student's high school sports eligibility. The NHIAA has concluded that this policy adequately addresses the concerns that a student might claim a particular gender identity for the purpose of gaining a perceived advantage in athletic competition, but does not unfairly discriminate against transgendered student athletes.

<http://www.nhiaa.org/ckfinder/userfiles/files/4HB%2018-19%20I%20Eligibility.pdf>

Jeffrey T. Collins, Executive Director

New Hampshire Interscholastic Athletic Association
251 Clinton Street
Concord, NH 03301

AS

Legislative recommendation: The Council received significant feedback at every listening session about persistent discrimination and inequities in schools, and the inadequacy of available resolution and redress processes. This discrimination included, but was not limited to:

- Unequal enforcement of discipline (e.g., race and disability)
- Unequal access to educational opportunities (e.g., race, national origin/language)
- Inability to obtain learning-ability testing (e.g., English language learners)
- Exclusion and segregation (e.g., disability, gender identity, national origin/language)
- Harassment and bullying (e.g., sex, national origin, gender identity, race)
- Lack of compliance with requirements regarding communication access

New Hampshire is one of the only states in the northeast without any state statutory anti-discrimination protection for students. Accordingly, the Council recommends that New Hampshire enact a state statute that prohibits discrimination against students in public schools based on race, color, sex, religion, national origin, mental or physical disability, gender identity, or sexual orientation.

This recommendation was based on input we received from the listening sessions across the state and aligns with the first goal that Governor Sununu outlined in his original Executive Order to review laws, regulations, and agency policies and procedures.

Without statewide protections against discrimination for students, we are giving the authority only to the federal government to investigate claims of discrimination against students. The New Hampshire Department of Justice is unable to intervene in cases of student discrimination because there are no state laws granting them such jurisdiction.

Simply put, we cannot say that New Hampshire's laws are working to combat discrimination and foster a more inclusive state when we are failing to protect our young people from discrimination in the classroom. Couple this with the many changes to Title IV funding and investigations over the past few years, and we are leaving our most vulnerable of populations – our children – at risk.

For decades, employees have had protections against workplace discrimination at both the federal level and through RSA 354-a in New Hampshire. If we believe that working adults deserve such protections, then we must recognize the importance of those same protections for young people, who are more vulnerable. I hope the time has come to offer these same protections to students in New Hampshire.

I respectfully urge the members of this committee to vote *ought to pass* on SB 263 and help put New Hampshire on the right side of history.

Thank you.

Allyson M. Ryder

Allyson M. Ryder
House Education Committee
Senate Bill 263
April 10, 2019

My name is Allyson Ryder. I'm a resident of North Hampton and also serve as a public member on the Governor's Advisory Council for Diversity and Inclusion.

Thank you for the opportunity to testify in support of SB 263, which would create state-level protections for Granite State students against discrimination.

I have been a public member of the Council since its inception. As a member of the LGBTQ community, I remember not too long ago when it was not safe to come out. Progress has been made but there is still work to be done – especially for our youth who are embracing their identities in ways that I could have never imagined doing myself.

When Governor Sununu established the Advisory Council for Diversity and Inclusion in December 2017, he outlined four goals he would like the members to address:

- Review and analyze New Hampshire laws, regulations, and agency policies and procedures, and recommend changes or amendments, where necessary, to further combat discrimination and advance the ends of diversity and inclusion;
- Identify and recommend ways in which the State can support local and community efforts, through educational programs or otherwise, to combat discrimination and advance diversity and inclusion;
- Identify and recommend ways in which the State can partner with non-governmental organizations to combat discrimination and advance diversity and inclusion; and
- Identify and recommend revisions to RSA 354-A and the scope of the duties of the Commission for Human Rights to combat discrimination and advance diversity and inclusion.

The Governor also outlined a requirement to hold listening sessions across the state in its first year. Following these directives, the Council held 13 listening sessions across the state and heard from nearly 500 people who were in attendance. The notes recorded from these sessions included three major themes:

- Quality of life varies significantly by individuals, their identities, and the regions of New Hampshire in which they live.
- Our education system is not adequately advancing diversity and inclusion, in part due to cost, curriculum, a lack of diversity in staff and faculty, and incidents of discrimination.
- The majority of incidents of racial bias that were raised and discussed at the listening sessions directly involved young people, namely students.

In December 2018, the Governor's Advisory Council on Diversity and Inclusion released a report which highlighted legislative and budgetary recommendations for the upcoming session. This bill today reflects one of those recommendations:

Testimony delivered by Christopher Jay, attorney with Cornerstone Action. For more information, please visit www.nhcornerstone.org.

New Hampshire has recently lurched into the murky and chaotic area of legislation driven by a desire to re-create human sexuality. The latest example is SB 263 which specifically lists “gender identity” and other categories as protected classes.

This act is misleadingly entitled “An act relative to anti-discrimination protection for *students* in public schools” (emphasis added). No one wants invidious discrimination in schools. But as is often the case, few look beyond the innocent facade to examine what these words are masking.

This bill includes **sex** and **gender identity** as protected categories, meaning that schools are prohibited from making any distinctions on the basis of sex or gender identity. What effect would this have on sex-segregated school sports? As with many proposed laws in our state, there is a rush to enact with very minimum discussion or thought, so the effect is worth noting.

Enacted in 1972, Title IX prohibits discrimination based on sex in schools. However, Title IX has been interpreted to mean that schools *can* discriminate on the basis of sex if there is sufficient reason, but schools are required to have “equal” sports *opportunities* for men and women, including equitable funding, facilities, etc. Presumably, SB 263 would be interpreted in line with Title IX - allowing sex-segregation if there is equal opportunity for all sexes. (See:<http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how>)

If this interpretation is applied, and schools are required to provide equal funding for the two sexes, male-sports and female-sports, why would they not also be required under SB263 to do the same for each self-defined gender category? Must they, for example, create a “Drakefluid” league if a student so identifies? And if not – why not? Is Drakefluid gender less valuable under the law than male or female? Why or why not?

Let’s look at other potential consequences of this apparently simple bill:

-Since the bill “protects” *persons* generally (not just students), anybody of any **age** could enroll in any class or publicly sponsored activity, if application procedures were properly followed.

-There is no minimum age limit on “gender identity.” Given this legal definition, a first-grade student could sue a school for misgendering them or failing to respect that child’s gender expression (as well as causing that teacher to lose his job see <https://www.heritage.org/gender/commentary/teacher-was-fired-misgendering-student-who-could-be-next>.)

-This bill subjects schools to sometimes impossible and often self-contradicting requirements as this MN school district found when trying to accommodate a girl swimming on the boys’ team.

(See: <https://www.frc.org/get.cfm?i=WA19C60&f=WU19C18>)

-This bill requires school sports teams to allow students to compete on any team of their choosing, so long as that choice is related to “gender identity.” Since there is no test for gender identity beyond self identification, what happens to long-established competition and testing standards based on the physical differences between the sexes? Will biological females be permanently disenfranchised in certain sports?

(See: <https://www.breitbart.com/sports/2019/02/25/transgender-runners-take-1st-2nd-connecticut-high-school-track-championships/>)

If passed, SB 263 would sow more chaos than protection. The bill is offers a counterfeit compassion to those who are truly struggling with gender dysphoria; an unsustainable short-term solution to a valid long-term problem. We can treat our children and our society better.

April 8th 2019

Hello, my name is Kelley Snyder. I am a homeowner in Farmington, NH, ACLU-NH Voter and Mother of a Transgender child in the public school systems. I ask for the Committee to support SB263, to protect our students in the NH public school systems from discrimination so we can prevent future families from going through some of the painful hardships we have endured.

When my child first started to come to terms with the emotional, social & physical changes that come along with being transgender, we wanted to gain the school's support. Given that my child spends anywhere from 35-40 hours a week at school, we thought the school would be a good place to start. My child was starting the social transition with things like cutting their hair and changing of the clothing style and some of their friends did not support this or understand. Therefore my child was becoming more withdrawn socially and the once honor roll student was now showing D's and F's in their progress reports. It was hard to watch such a once vibrant and brilliant student become darkened.

I started by asking the guidance counselor to meet with my child as I had noticed some big changes in grades and some withdrawn behavior from social activities. This went on that entire year that I had several meetings with the principal and guidance counselor (along with several e-mails and phone calls to follow up) and not once did the guidance counselor meet with my child. This was disheartening to ask my child almost weekly did the guidance counselor meet with you today, and to see the look of disappointment on their face. I soon realized I had no legal recourse to make a guidance counselor do their job, and this was extremely frustrating. All I had was to constantly keep reminding them that each child is important and we shouldn't judge we should just support. I decided to seek outside counseling, support groups and support through friends and family as I realized school was not a place of support. During that year as my child was being treated by an outside counselor for anxiety and gender dysphoria simultaneously my child had a health class and was asked to write a paper on mental illness.

When my child asked if they could write a paper on gender dysphoria to enlighten themselves and the class the teacher scoffed went to their computer and "Googled" the term. Then told my child that it wasn't a "real" illness, to pick another topic. Another action of my child being dismissed for who they are, as a parent this goes beyond frustrating when we as adults would never tolerate someone treating us like that. Also that year because of my child's dysphoria they took a lower grade in gym class because my child felt extreme anxiety changing in a locker room setting with no privacy.

The hardest part of all was having my child still go to school in that kind of environment because we had no choice to move, & I was going through a major medical diagnosis myself and we had no recourse to effect change in the school. Because of all of the outside support, my child still held their head high when winning the School Geography Bee later that year, and even though we were one of the only school's without teacher support, we can't believe what an accomplishment they made in such a dismissive atmosphere.

We ask that you support this bill so other students will have support in their schools. A child's ability to learn and thrive and their basic right to be not discriminated against should be a top priority. Won't you please help protect our students! Vote OTP on SB263

Kelley Snyder

April 6th 2019

Good afternoon,

I am Samuel D'Agostino. I live in Wentworth New Hampshire and I am a student in the Pemi-Baker School District. I came here today to promote support for SB 263 and the necessary progression it will bring to our school system.

After NH1319, there are few public places where discrimination of transgender people is still admissible outside of our schools. Through the loophole of not being directly addressed in any current laws, schools have yet to acknowledge and accept their Transgender and gender non-conforming students. By ignoring these vulnerable and developing citizens and the issues we face many struggles go overlooked such as bathrooms, gender segregated activities and locker rooms.

As an academically motivated person, it causes me severe anxiety when facing such challenges. I currently am holding off getting my graduation-required gym credits because without these essential protections, my school will not allow me to use the men's locker room with my fellow male classmates. I also cannot use the alternate option of using one of our limited number of gender neutral restrooms because there is not one close enough to the locker rooms that I can still be under the supervision of my physical education teacher.

Overall this bill will positively impact many of the hardworking students of New Hampshire, like myself. I urge this committee to vote OTP on SB 263.

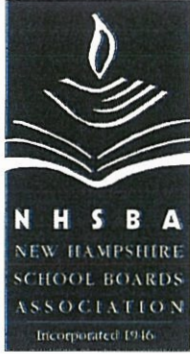
Regards,
Sam D'Agostino

My name is Ben Vail and I am a resident of Lebanon, NH. I am urging members of this committee to support SB263, so that all of New Hampshire's students can have their rights protected at school.

As a student, I did well in school, yet starting in middle school I realized I was gay and worried about how my school community would treat me. I spent a lot of time hiding who I was, so I would not be perceived as gay and face insult or even discrimination from students or teachers. By the time I was a senior in high school, I had only told a few close friends and my immediate family. I saw peers of mine who did not or could not hide their identities face ridicule and not be accepted in my school. It was this experience that made me realize that all students should have protections to allow themselves to live openly just as they are in their schools.

As an adult, I became a teacher and worked in public schools in the city of New Orleans for six years. Only as an educator did I come to better understand the pressures, responsibilities, and work that both students and teachers face each day. There is just so much at stake and the last thing students need to feel is unsafe in their schools because of discrimination. I urge you to vote in support of SB263 so students can feel protected in their school communities and focus on what matters most--their education.

Thank you,
Ben Vail



New Hampshire School Boards Association
25 Triangle Park Drive, Suite 101
Concord, NH 03301
(603) 228-2061
(603) 228-2351 (fax)
www.nhsba.org
Barrett M. Christina, Executive Director

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NHSBA Testimony in Opposition to SB 263 – April 10, 2019

Existing statutes, NHDOE Rules and local school board policies that make SB 263 unnecessary:

186:11 Duties of State Board of Education. The state board of education shall, in addition to the duties assigned by RSA 21-N:11:

XXXIII. Discrimination. Ensure that there shall be **no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status, or national origin in educational programs**, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status, national origin, or economic status of the benefits of educational programs or activities.

NHDOE Rules – Part Ed 303 Duties Of School Boards. Ed 303.01 Substantive Duties. Each school board shall:

(i) Adopt a rule to ensure that there shall be **no unlawful discrimination on the basis of sex, race, age, creed, color, marital status, national origin, or disability in educational programs or activities** consistent with local standards which may be stricter in specific areas than the broader statewide standards;

(j) **Establish a policy on sexual harassment**, written in age appropriate language and published and available in written form to all those who must comply, which includes, at a minimum, the elements specified below:

(1) A statement that sexual harassment is against the law and against school district policy;

- (2) A definition of sexual harassment with examples of actions that might constitute sexual harassment;
- (3) The names and roles of all persons involved in implementing the procedures;
- (4) A description of the process so all parties know what to expect, including time frames and deadlines for investigation and resolution of complaints;
- (5) A prohibition against retaliation toward anyone involved in a complaint;
- (6) A description of possible penalties including termination;
- (7) A requirement that a written factual report be produced regardless of the outcome of the investigation;
- (8) At least one level of appeal of the investigators recommendation; and
- (9) A clear statement that someone can bypass the internal process and proceed directly to the New Hampshire commission on human rights, with address and phone number, or office of civil rights, with address and phone number.**

Local School Board Policies: (non-exhaustive)

AC – Non-discrimination

ACD – Commitment to Religious Neutrality

ACE – Procedural Safeguards; Non-discrimination on the Basis of Handicap/Disability

EFAA – Meal Charging

GBA – Equal Employment Opportunity

GBAA – Sexual Harassment (Staff)

IHBA – Programs for Students with Disabilities

JBAA – Sexual Harassment (Students)

JICK – Bullying

Bill as
Introduced

SB 263 - AS AMENDED BY THE SENATE

03/28/2019 1141s
03/28/2019 1290s

2019 SESSION

19-0995
08/05

SENATE BILL **263**

AN ACT relative to anti-discrimination protection for students in public schools.

SPONSORS: Sen. Sherman, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Levesque, Dist 12; Sen. Rosenwald, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Watters, Dist 4; Rep. Cannon, Straf. 18; Rep. M. Smith, Straf. 6; Rep. Altschiller, Rock. 19; Rep. Janvrin, Rock. 37; Rep. Ley, Ches. 9

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill creates a cause of action for persons injured by discrimination in public schools.

This bill also creates a cause of action for the attorney general in cases of discrimination in public schools.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 263 - AS AMENDED BY THE SENATE

03/28/2019 1141s
03/28/2019 1290s

19-0995
08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to anti-discrimination protection for students in public schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after
2 section 37 the following new subdivision:

3 Discrimination in Public Schools

4 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,
5 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,
6 gender identity, sexual orientation, race, color, marital status, familial status, physical or mental
7 disability, religion, or national origin, all as defined in RSA 354-A. Any person claiming to be
8 aggrieved by a discriminatory practice prohibited under this section may initiate a civil action
9 against a school or school district in superior court for relief at law or at equity. The attorney
10 general may also initiate a civil action against a school or school district pursuant to this section for
11 relief at law or at equity.

12 2 New Section; Discrimination Prevention Policy. Amend RSA 193-F by inserting after section
13 8-a the following new section:

14 193-F:8-b Discrimination Prevention Policy Required.

15 I. Each school district and chartered public school shall develop a policy that guides the
16 development and implementation of a coordinated plan to prevent, assess the presence of, intervene
17 in, and respond to incidents of discrimination on the basis of age, sex, gender identity, race, creed,
18 color, marital status, familial status, physical or mental disability, national origin, or any other
19 classes protected under RSA 354-A.

20 3 Effective Date. This act shall take effect 60 days after its passage.