



SCHOOLS New Hampshire

On December 13, the American Federation of Teachers New Hampshire (AFT-NH) filed a federal lawsuit over New Hampshire's Right to Freedom from Discrimination in Public Workplaces and Education Law.

On December 20, a second lawsuit was filed over the law, this one by the National Education Association New Hampshire (NEA-NH), the state's largest teacher's union; two school diversity, equity, and inclusion (DEI) administrators; the state chapter of the American Civil Liberties Union (ACLU-NH); the Disability Rights Center New Hampshire; GLBTQ Legal Advocates; and others.

The Freedom from Discrimination law was passed in June through a rider bill to the state budget. It prohibits teaching "divisive concepts" such as that groups of people are inherently superior, oppressive, or racist because of immutable characteristics such as race, gender, and sexual orientation.

Critics have said that due to the law's ambiguities, it chills speech and restricts teachers' ability to discuss the historical impacts of racism, sexism, and other forms of discrimination with students.

"Ambiguities, coupled with the law's very severe penalties, create an

environment where educators now feel compelled to self-censor, including on important topics that frankly are critical to the diversity, equity, and inclusion work that's being done in this state," said ACLU-NH legal director Gilles Bissonnette.

Both suits argue the law restricts how public school educators can teach about racism, sexism, and other forms of discrimination. They also claim that the law is unconstitutionally vague under the Fourteenth Amendment for failing to specify what topics and materials can and cannot be included in lessons, inviting "arbitrary and discriminatory enforcement."

The AFT-NH suit contends that the law violates the First Amendment as well as New Hampshire's state Constitution, which guarantees an "adequate education" for all students.

Plaintiff Andres Mejia, director of DEI for the Exeter Region Cooperative School District, said that the law fundamentally prevents him from doing his job, which includes training staff on concepts like implicit and institutional bias, racism, and inclusiveness.

Mejia also stated that the vagueness of the law prevents him from advising teachers as to whether they're permitted to use certain books or materials.

NEA-NH president Megan Tuttle said that their requests for specific guidance on the law from the Department of Education and the Attorney General's Office have gone unanswered.

"Instead of trying to help educators comply with the new law, Commissioner [Frank] Edelblut publicly installed mechanisms for reporting educator non-compliance and procedures that would lead to taking away teaching credentials," said Tuttle. "That lack of guidance leaves teachers feeling confused, unsupported, and fearful of running afoul of the law.

A related yet even more restrictive bill has also been introduced for the 2022 legislative session. HB 1255 "an act relative to teachers' loyalty" would prohibit advocating communism, socialism, or Marxism or "any doctrine or theory promoting a negative account or representation of the founding and history of the United States of America."

Lawsuits on First Amendment grounds are likely to follow should this bill pass and be signed into law.

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