



July 12, 2021
First Class U.S. Mail

John M. Formella, Esq.
Attorney General
N.H. Dept. of Justice
33 Capitol Street
Concord, NH 03301

Re: Implementation Guidance for Public School Districts Regarding House Bill 2

Dear Attorney General Formella:

As President of NEA-NH, which represents 17,000 educators in our state, I write to request the issuance of formal guidance on the implementation of HB 2 within public school districts and public institutions of higher education across the State of New Hampshire. More specifically, the statutory language passed, under the section entitled: “Right to Freedom from Discrimination in Public Workplaces and Education,” contains ambiguity requiring clarification. Such clarification is particularly important for certified educators given that the statutory language provides: “IV. Violation of this section by an educator shall be considered a violation of the educator code of conduct that justifies disciplinary sanction by the state board of education.” (emphasis added).

Therefore, please issue detailed guidance to be followed by educators, administrators and school boards covering, at a minimum, the following subject areas:

1. What types of academic instruction regarding inherent and/or institutional bias or discrimination are prohibited;
2. What it means to permissibly teach prohibited “subjects identified in this section” as a “larger course of academic instruction” as included in section RSA 193:40, II;
3. Which topics related to racial and/or social justice are specifically prohibited from academic teaching and dialogue within public schools;
4. Whether or not academic instruction regarding historical racism, including, without limitation, in relation to slavery, segregation, the civil rights movement and affirmative

action, may still be taught in public school classrooms. If so, how a violation of RSA 193:40 can be avoided when discussing these topics;

5. What specific categories of literature or written subject matters are prohibited from assignment or dissemination to students;
6. What are the parameters educators must follow when answering questions from students about current events that touch the topic areas in the law, e.g. the protests surrounding police reform, the Black Lives Matter movement, and news stories about the passage of this law;
7. What may be taught about historical systems and practices which led to discriminatory outcomes. For example, what is permissible to be taught about “redlining” by the Federal Housing Administration in the 1930’s that led to racially segregated neighborhoods throughout the United States;
8. Is teaching about the existence of implicit bias or other similar social sciences prohibited. If not, what are the guideposts for discussing this kind of theory in classrooms;
9. What are the best practices for public school districts, administrators and public educators to avoid a violation of the new provisions enacted by HB 2 regarding the education of public school students;
10. What, if any, discretion remains with the New Hampshire Board of Education to not issue discipline where it is found that a teacher or district allowed students to hear or be taught prohibited information, which, in accordance with RSA 193:40, IV, “shall be considered a violation of the educator code of conduct that justifies disciplinary sanction by the state board of education;”
11. How does the law apply to higher education staff as the law only mentions the academic freedom of faculty members. Are their prohibitions on what staff members can discuss, teach, or provide to students;
12. What are the guideposts for academic freedom provided to University System Faculty. HB2 states the law shall not limit academic freedom to “research, publish, lecture, or teach in the academic setting” does this mean their freedom on these topics is absolute?

Once we have received guidance from the Department of Justice, we will swiftly disseminate that much-needed information to our members. As we approach the 2021-22 academic year, time is of the essence. The current state of confusion caused by HB 2 as it relates to public education will likely lead to unnecessary legal disputes and action if clarification is not provided. If we can be of assistance to you in forming your analysis and/or producing guidance, please do not hesitate to contact us for that purpose.

Thank you for your attention to this important and time-sensitive matter. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink that reads "Megan Tuttle". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

Megan Tuttle
President
NEA-NH