



August 5, 2021

EMAIL

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Frank Edelblut
Commissioner (frank.edelblut@doe.nh.gov)
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101 Pleasant Street
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Re: Request for Further Clarification Concerning Implementation Guidance on House Bill 2 for Public School Districts

Dear Attorney General Formella and Commissioner Edelblut:

I write to you as the President of NEA-NH, an organization representing approximately 17,000 educators in New Hampshire, every single one of whom are impacted by the “Right to Freedom From Discrimination in Public Workspaces and Education” law signed by Governor Sununu on June 25, 2021. It is because of this vast impact to our membership that I am following up with a further communication after our letter of July 12, 2021, has thus far been unanswered by your offices.

NEA-NH has reviewed the 2½ -page FAQ guidance issued on Wednesday July 21, 2021 (your Guidance). We appreciate the time and effort expended by your offices in developing this guidance, which answers a number of questions that our members have had about the new law. Additional questions remain, however, on which we seek clarification. Because the licenses, careers, professional reputations, and livelihoods, of our members are at stake for any violation of the law, it is imperative that they have a detailed understanding of what conduct and/or teaching practices are prohibited by the law and constitute “a violation of the educator code of conduct that justifies disciplinary sanction by the state board of education.” With the 2021-2022 school year quickly approaching, we need your assistance in making the full scope of the law clear.

As we understand the law, as construed through the lens of your July 21st Guidance, we understand it to permit the teaching and discussions described below. If we are mistaken in our legal analysis, please respond in detail to correct our understanding. Given the high stakes for our members, it is imperative for our members to be provided with reliable, detailed guidance that will allow them to clearly avoid the severe consequences of violating this amorphous law.

We understand as follows:

1. Discussing with students¹ incidents of racism or other prejudices exhibited and experienced by them or others in the school community or elsewhere is permitted.
2. Engaging in conversations about racism or other prejudices students, or others known to them, may have exhibited in the past is not prohibited provided the educator does not instruct students that they exhibited those behaviors because of inherent characteristics.
3. It is permissible to draw attention to the language, behavior, or writing of a student that might be sexist, racist, or otherwise prejudicial. The law does not prohibit educators from referring for discipline students for such behavior or comments provided it is done in accordance with school policy and procedure and state law. In fact, in order to comply with requirements of the “Bullying Law” educators are required to recognize and report such conduct in accordance with the school board policy implementing the law. *See* NH RSA 193-F.
4. Introducing students to the concept of implicit bias, discussing the topic, and discussing student experiences with bias is permitted, so long as students are not taught that bias is inherent in students due to their status as members of a specific group. Implicit bias training and education specifically pertaining to states of mind which are learned, assumed, or reinforced by society and not “inherent,” is permitted.
5. Structural Racism (a.k.a Societal Racism, Systemic Racism) describes the ways in which institutional, historical, cultural, and interpersonal practices that are learned or imposed create racism within structures of society, the economy and the government. It does not contemplate that persons or groups are naturally, biologically, or innately racist. Therefore, including the concept of Structural Racism in instruction and conversation with students is permitted.²
6. Specific books or works of certain authors are not “banned” under the law.³ Assigning students the writings of certain authors that express the author’s particular view or theory about discrimination, racism or other prejudices is permitted provided the educator

¹ “Students,” encompasses both K-12 students and higher education students. “Educators,” are those teaching and non-teaching employees in both K-12 and public higher education institutions.

² For example, students could be taught, not only about the racist historical practice of “redlining,” but also about the lasting inequalities and structural barriers it has created for generations of African Americans.

³ On June 13, 2021 Commissioner Edelblut wrote an Op-Ed in the Union Leader leaving the distinct impression that Dr. Ibram Kendi’s book, *How to be an Anti-Racist* may not be assigned under the new law. He raised the same proposition at the July 8, 2021 State Board of Education meeting. The Guidance is not consistent with his statements. Please address this contradiction. Additionally, if there are certain texts which your offices’ believe are *per se* prohibited under this law, please provide a list so educator’s know that prior to making 2021-2022 lesson plans.

conveys to students that the book represents the author's opinion or theory and the educator does not require the student to adopt the theory or opinion. For example, the works of James Baldwin are not *per se* prohibited from instruction or discussion in accordance with the above.

7. The law permits teaching novels, non-fiction works, or other approved texts by instructing students on, and discussing, the historical context surrounding the works. Such permitted instruction and discussion includes information on racism or other prejudices which were expressed in both overt and subtle ways by systems, individuals, and government actors.

8. The law permits instruction on, and discussion of, racism and oppression in teaching historical events and contemporary events, so long as students are not instructed that the individual actors were inherently racist. For example, educators may explain the racism carried out systematically, collectively and individually by southern slave owners in the United States, prior to the American Civil War. Educators may also explain the collective and large-scale societal discrimination and genocide carried out by Nazi Germany against Jewish populations in several countries. These historical issues can be connected to the modern era to explain the danger of racism and neo-Nazi groups that exist today.

9. Teaching historically accurate lessons is permissible under the law, even if that history challenges students' notions of history as they previously understood it, provided the educator does not assign racist or prejudicial actions to the historical actors as inherent to them. For example, accurately teaching about the genocidal impact on Native Americans of the arrival of colonial Americans to the United States, and the subsequent western expansion of the United States, is permitted.

10. The use of the historical primary sources (original documents) in coursework is permitted provided the use of sources is part of a larger course of academic instruction. This is the case even if the sources may contain an author's assertion that one race or group is inherently inferior to another, for example Thomas Jefferson's *Notes on the State of Virginia*.

11. Similarly, it is permissible to assign reading of fiction and non-fiction works where character(s) may express discriminatory beliefs or engage in discriminatory acts against other characters or persons, for example *To Kill a Mockingbird* or *Huckleberry Finn*. Discussion about the actions of those characters, their discriminatory beliefs, or intent is not prohibited.

12. It is permissible under the law to use teaching techniques which probe a student's understanding of their current reality, push them to think critically and analytically about social and historical contexts, and asks them to empathize with others or consider a different perspective than the one they currently have, provided the educator does not require that the student adopt a view that racism is inherent to some individuals.

13. It is permissible to discuss the subject of "white privilege," a set of social and economic advantages that are a product of systems, structures, and learned biases, so long as the privilege is not discussed in such a way as to indicate that the racial favoritism at the core of white privilege is "inherent" or cannot be overcome.

14. It is permissible to engage with students in discussion of gender non-conformity, acknowledging different gender identities of students and colleagues, and curriculum which contains characters and story lines which discuss or highlight gender non-conforming, or LGBTQ individuals provided the text does not promote discrimination of such individuals.

15. The law permits the exhibiting and sharing of art, music, dance, or other artistic expressions that comment on racism, sexism, or other prejudices provided it is age appropriate and relevant to the curriculum approved by the School Board or higher education institution. It is also permitted for artists, writers, and historians to address students or for students to read about the artist's motivation for the work.

The paragraphs above do not purport to exhaustively describe all of the instruction and discussion that is permitted under the law but are illustrative of the types of discussion and instruction that we understand remain permitted. We appreciate your prompt response to confirm that these examples are consistent with your understanding of the law, so that educators may plan accordingly for the upcoming year.

We expect that as the implementation of the law moves forward, we may encounter scenarios requiring further analysis. We are hopeful that your offices, as the chief law enforcement and educational agencies of the Granite State, will have continual open dialogue with us about these issues as they arise.

Sincerely,



Megan Tuttle
President, NEA-New Hampshire