

Community College System of New Hampshire

Testimony on HB510, *relative to establishing certain due process rights for students, student organizations, and faculty members facing disciplinary actions by state institutions of higher learning*

January 21, 2025

House Committee on Education Funding

This bill establishes certain requirements related to instances when disciplinary proceedings are brought by the institution against college faculty, students and student organizations. While many due process elements in HB510 are similar to those presently in place across the Community College System of New Hampshire (CCSNH), certain provisions of the bill, including the structure of the formal hearings, differ in part from current practices. **Since implementing a new/additional process comes with a cost, it is important to assess what is gained by the change, as well as whether the bill would produce negative impacts.**

CCSNH strongly supports due process, and we believe existing laws, regulations, policies and practices provide robust and comprehensive protections. Our policies do not exist in a vacuum; importantly, they align, as they must, with existing state laws, with federal laws and regulations, and with negotiated collective bargaining agreements. We are not aware of any instance where our practices have been found to be deficient or where a lack of due process occurred. Hearing and grievance procedures exist. Academic freedom for faculty is well established. The right of student organizations to form and access resources on an equal basis across organizations is protected in existing policies.

In replacing the current process with one that closely resembles a courtroom proceeding, the bill sets up an adversarial dynamic in place of the resolution environment for which educational institutions strive. It treats employment matters, which are specific in nature and already addressed in employment law including public employment labor relations statutes, like civil and criminal matters. HB510 would increase costs via additional administrative workload and the use of legal services. Again, if problems have arisen that need correcting, these changes might make sense, but we do not believe that to be the case.

As the bill creates a new set of requirements for students, student organizations and faculty, the colleges would be maintaining a separate set of practices for different employee groups, with a resulting cost to navigate and ensure staffing and compliance for both. The bill also replaces the current grievance and arbitration process (where, by agreement, costs are shared between the parties), which will impose additional costs on the institutions.

Provisions of this bill conflict with Title IX of the Education Amendments of 1972, creating costs for legal advice defense of the institution in instances where legal and regulatory requirements conflict.

For the committee's consideration we would like to note specific areas of concern. These include:

**1. Multiple forms of existing oversight.** Ultimately the accountability and responsibilities of higher education institutions are linked to multiple existing organizations that prescribe rules and make sure the rights of our students, employees and institutions are protected. Our policies are aligned with such oversight from multiple state and federal entities, such as:

- The US Department of Education and the federal Office of Civil Rights (OCR)/Title IX. Were we to violate the provisions of Title IX in any way, students and faculty members can sue in state court or file a complaint with OCR, including if we do not give step by step due process rights that are outlined in Title IX. Penalties for non-compliance include forfeiting federal funds. Strict due process is built into the regulations. Persons aggrieved can bring suit against the institution under Title IX, or make a complaint to the Office of Civil Rights.
- The NH Human Rights Commission (NHHRC) provides protections to employees. NHHRC will become involved if we fail to provide an employee with due process.
- NH RSA 188-H, passed in 2020 created a new and comprehensive set of requirements related to instances or allegations of sexual misconduct. Reconciling the two sets of requirements would at best be complicated, and may not be possible to align.

**2. Unilateral change to collectively bargained provisions**

- This bill would replace mutually agreed-upon provisions in collective bargaining agreements upon expiration of the contract. CBAs represent mutual agreements and balancing of responsibility, cost and obligations. They are inter-related and whole. This bill changes one element without respect to the whole fabric of related provisions that have been worked out between the parties.

**3. The structure and goals of the student code of conduct** are designed for the higher education environment, for students to learn, and with the hope that these matters need not accelerate into the structure and dynamics of a civil or criminal trial.

- CCSNH's student code of conduct seeks informal resolution if possible. It seeks to help students learn and respect community standards in what is potentially a new time of independence as a young adult. It includes the presumption of innocence. It outlines a responsive timeline. It outlines prohibited conduct, potential sanctions and the process for resolution and appeal. It includes the right to an advocate. By mandating more of a civil/criminal procedure approach, HB510 alters the focus on remediation, learning, and informal resolution.

**4. HB510 curbs the institution’s ability to take action in support of safety and well-being and institutional risk.** In this bill the procedural rights and steps outlined must all occur prior to the imposition of any action by the college. Institutions would lose the ability to temporarily act in the safety interests of the campus or individuals. As such the bill does not take into consideration the potential harm to individuals and institutions, including potential liability and reputational risk. The threshold in the bill of “imminent threat of physical injury to any person or significant damage to property,” is narrow and does not take into consideration the impact on an alleged victim, as well as risk and liability.

What we share in testimony and have in place at our institutions is supported by subject matter experts whose professions, professional knowledge and backgrounds are in student affairs, human resources, labor relations, Title IX and higher ed law. There is a considerable body of knowledge and practice invested in all of these. With respect, we ask you to be very cautious about mandating changes to complex and purposeful practices.

We respectfully ask that the Committee find this bill Inexpedient to Legislate.

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