



New Hampshire House Education Policy and Administration
February 2, 2026
RE: HB1778

Dear Chairperson Noble and members of the House Education Policy and Administration committee,

We write on behalf of the ACLU of New Hampshire to raise the red flag that HB1778 is yet again another vague, broad, and unconstitutional bill that claims to prohibit the use of “personal identity ideology” in public school instruction, curriculum, and policies. HB1778 is unconstitutionally vague like the two prior attempts by the legislature to censor what can be taught in classrooms in 2021 and 2025.

New Hampshire does not need to continue spending money defending itself against self-inflicted lawsuits. This is not just a constitutional issue – it is a fiscal one. The New Hampshire Department of Justice (“NHDOJ”) has already noted this bill would likely require at least new staff and could cost between \$100,000 and \$500,000 per year, with no funding provided. So, again the legislature is risking spending taxpayer dollars defending and enforcing a law that courts are likely to reject.

Censorship should be a nonpartisan issue we can all rally against but here HB1778 promotes censorship. In schools, we should be allowing ideas to be discussed – even those we do not agree with – so students are exposed to alternative perspectives and taught to evaluate issues for themselves. This skill set is necessary to educate the next generation of adults who have critical thinking skills and can meaningfully participate in our democracy. HB1778, because of vagueness and prospect of massive penalties, will chill this vital work in schools.

I. The Legal History of These Bills – New Hampshire Federal Courts Have Repeatedly Declared Unconstitutional Efforts Similar to HB1778.

New Hampshire has already, on two prior occasions, sought to censor what can be taught in schools. Both efforts were declared unconstitutional.

First, in 2021, New Hampshire enacted through the budget the so-called “divisive” or “banned concepts” law that sought to discourage public school teachers from teaching and talking about four topics implicating race, gender, sexual orientation, disability, and gender identity in the classroom.

In May 2024, the U.S. District Court for the District of New Hampshire (Barbadoro, J.) found that the law violated the Fourteenth Amendment, concluding the law was so unclear and vague that it failed to provide necessary guidance to educators about what they could and could not include in

their courses and that it invited arbitrary and discriminatory enforcement—up to and including the loss of teaching licenses through the Educator Code of Conduct.

The Court stated in its order that the “prohibitions against teaching banned concepts are unconstitutionally vague,” and that the law contains “viewpoint-based restrictions on speech that do not provide either fair warning to educators of what they prohibit or sufficient standards for law enforcement to prevent arbitrary and discriminatory enforcement.” The Court concluded further, “All told, the banned concepts speak only obliquely about the speech that they target and, in doing so, fail to provide teachers with much-needed clarity as to how the Amendments apply to the very topics that they were meant to address. This lack of clarity sows confusion and leaves significant gaps that can only be filled in by those charged with enforcing the Amendments, thereby inviting arbitrary enforcement.”

This decision can be found here: <https://www.aclu-nh.org/app/uploads/2024/05/courtorder-bannedconcepts.pdf>.¹ Other courts have reached similar conclusions in various contexts.²

Second, the New Hampshire legislature tried again in 2025 when it enacted a new law through the budget, effective July 1, 2025, that sought to ban diversity, equity, and inclusion programs pertaining to race, gender, sexual orientation, gender identity, and disability in New Hampshire schools (including both K-12 public schools as well as both public and private colleges and universities) and public entities (like police departments and libraries). This law fared no better.

On October 2, 2025, the U.S. District Court for the District of New Hampshire (McCafferty, J.) issued a preliminary injunction blocking this law for almost all public school districts. The Court held that the plaintiffs are likely to succeed on their claims that the law violates due process and is contradicted by federal disability civil rights laws. The Court explained: “The breadth of the anti-DEI laws’ prohibition is startling. The definition of ‘DEI’ contained therein is so far-reaching that it prohibits long-accepted—even legally required—teaching and administrative practices. It is hard to imagine how schools could continue to operate at even a basic level if the laws’ prohibitions were enforced to their full extent.”

This decision can be found here: <https://www.aclu-nh.org/app/uploads/2025/10/PI-Order.pdf>. This decision was not appealed to the First Circuit Court of Appeals, and litigation is ongoing.

¹ The State appealed this decision to the First Circuit Court of Appeals, which heard oral argument in April 2025. No decision has yet been rendered.

² See, e.g., *Honeyfund.com, Inc. v. Desantis*, 622 F. Supp. 3d 1159, 1182 (N.D. Fla. 2022) (in addressing regulation on private employers, stating: “Concept 4 is even worse, bordering on unintelligible. Under that provision, employers cannot endorse the view that ‘[m]embers of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.’”), *aff’d on other grounds*, 94 F.4th 1272 (11th Cir. 2024) (enjoining law on First Amendment grounds); *Pernell v. Fla. Bd. of Governors*, 641 F. Supp. 3d 1218, 1281 (N.D. Fla. 2022) (in addressing regulation on colleges and universities, stating: “For example, concept four is mired in obscurity, bordering on the unintelligible. Under that provision, educators cannot endorse the view that ‘[m]embers of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.’”), *appeal filed and stay of injunction denied*, Nos. 22-13992-J, 22-13994-J, 2023 WL 2543659 (11th Cir. Mar. 16, 2023).

II. Repeating History – HB1778 Creates the Same Constitutional Problems.

HB1778 is just as constitutionally problematic as these two prior laws were declared unconstitutional.

This bill is vague and will allow for arbitrary and discriminatory enforcement under RSA 354-A and the Educator Code of Conduct.

- HB1778 incorporates as prohibited “personal identity ideology” “[a]pproaches or forms of teaching prohibited by RSA 186:72 relative to diversity, equity, or inclusion (DEI)” despite the fact that RSA 186:72 was preliminary enjoined as unconstitutional by the U.S. District Court for the District of New Hampshire in October 2025.

We have countless questions because vagueness consumes HB1778.

- HB1778 purports to ban “any approach or form of teaching that prioritizes personal identity characteristics over individual merit,” with personal identify characteristics defined as one’s “race, color, biological sex, sexual orientation, national origin, religion, or gender identity.” For example, what does “priority” mean? And would any form of instruction that uplifts the current lived experiences of Black students or LGBTQ+ Americans—including experiences of discrimination and how to address these experiences—constitute teaching that “prioritizes personal identity characteristics,” and thus be banned? Would this include assigning books that uplift these experiences and ways to address them, especially where the bill “[p]rohibits use of personal identity ideology related curriculum or curriculum materials”? What about instruction on the lived experiences of persons of certain religious faiths, including Christians? These are among the nearly infinite number of questions that this bill leaves unanswered, with the prospect of massive penalties and licensing ramifications through RSA 354-A and the Educator Code of Conduct, respectively, if educators guess wrong. These ambiguities, combined with penalties, will chill instruction in the classroom.

Why are we doing the same thing over and over and over?

- HB1788 claims to not “prohibit discussing, as part of a larger course of academic instruction, the historical existence of ideas and subjects identified in this subdivision,” this does not cure the law’s vagueness. Similar language was placed in the 2021 banned/divisive concepts law, but this did not save the law from being declared unconstitutional by the District Court in its May 2024 decision. So, how much larger does the “larger course of academic instruction” need to be before it insulates discussion of “personal identity ideology” from becoming a violation? The bill provides no guidance on this question.

III. The Money Wasted – Fiscal Note Acknowledges Costs of This Legislation.

Lastly, this Committee should be mindful of the fiscal costs of this legislation that are not allocated in this bill. Another red flag.

The NHDOJ states that “this bill is unclear regarding the evaluative standards for determining compliance and the mechanism for referring complaints to the Attorney General.” The NHDOJ adds: “While the number of potential complaints cannot be estimated, the Department of Justice assumes that the increase in workload would require at least one new full-time Investigator and one new full-time Attorney. If complaint volume exceeds approximately 40 cases, additional staffing may be necessary. The Department did not provide position specifics or cost estimates, except for total cost is indeterminable and would be between \$100,000 and \$500,000 per year. This bill provides neither authorization nor appropriation for new personnel.”

For these reasons, HB1778 should be voted inexpedient to legislate. We urge you to reconsider moving this bill forward and redirect state money to other legislative efforts.

Respectfully submitted,

Gilles Bissonnette
Legal Director
ACLU of New Hampshire
gilles@aclu-nh.org

Amanda Azad
Policy Director
ACLU of New Hampshire
amanda@aclu-nu.org