



DIOCESE OF MANCHESTER

February 24, 2023

The Honorable Rick Ladd, Chair
And Members, House Education Committee
Legislative Office Building
Concord, New Hampshire 03301

Re: HB 451 (State Board of Education Prohibition on Discrimination)

Dear Mr. Chair and Members of the Committee:

As Director of the Office of Public Policy of the Roman Catholic Diocese of Manchester, and on behalf of Bishop Peter Libasci, I write to ask you to recommend **HB 451 as inexpedient to legislate.**

As a threshold matter, there are some significant ambiguities evident on the face of the bill. Lines 3 and 4 require DOE to ensure no unlawful discrimination “in admissions.” At the end of line 7, however, this same requirement is expanded to apply with respect to the broader category of “educational programs.” Likewise, lines 8-10 prohibit denial of “the benefits of educational programs or activities” to “any person”, which (because subparagraph (a) is framed with respect to “persons” and subparagraph (b) uses the word “students”) appears designed to cover a broader universe than just students. In any event, the bill is unclear.

Turning to the substance of the bill, the text of HB 451 is susceptible of a reading that would prohibit nonpublic schools that accept public funds from actions with respect to one of the protected categories. As I have previously stated to the Committee with respect to other bills, we disagree with the underlying premise of HB 451 insofar as it is intended to treat scholarships under RSA 77-G or EFAs under RSA 194-F as public funds that occasion treatment of nonpublic schools in ways that are different from how they have been treated under laws of long-standing in New Hampshire.

That said, if HB 451 is intended to reinforce that nonpublic schools will comply with *applicable* nondiscrimination laws, HB 451 is unnecessary because these laws obviously apply today. If HB 451 is intended to prohibit nonpublic schools from engaging in actions that are currently lawful under RSA 354-A (the state anti-discrimination law), then HB 451 is problematic because it goes beyond the provisions of RSA 354-A, and moreover it does so without any reference to RSA 354-A aside from the single provision that would allow the NH Human Rights Commission to hear claims for violations of RSA 186:11, XXXIII(a). (If enacted, this would be the first and only time that RSA 354-A is mentioned in RSA 186.)



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To illustrate one problem with taking such an approach, religion is a protected category under HB 451 and likewise under RSA 354-A. RSA 354-A, though, contains express exemptions for religious organizations, and thus for instance a religious employer lawfully may give hiring preferences to applicants who share that employer's religious faith. While that hiring preference is permitted under RSA 354-A because of the exemptions, it would not appear to be permitted under HB 451 because HB 451 proscribes discrimination on the basis of religion *without including the exemption found in RSA 354-A*.

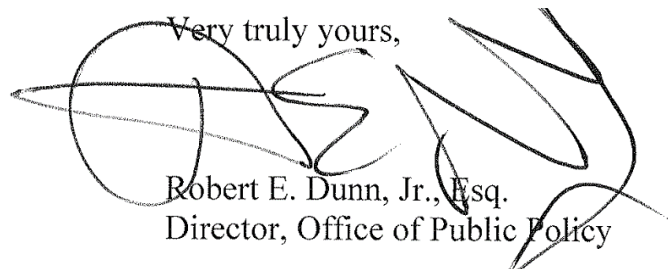
RSA 354-A is the product of decades of careful policy development and it is simply inadvisable to change RSA 354-A obliquely by means of legislation that involves statutes other than RSA 354-A.

It is also worth noting that HB 451 might run afoul of constitutional requirements as well. For instance, nonpublic religious schools cannot constitutionally be prohibited from making decisions that are protected under the First Amendment. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012).

Accordingly, we respectfully ask that you recommend HB 451 **as inexpedient to legislate**.

Thank you as always for your kind consideration of our views.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. E. Dunn, Jr.', written over the typed name and title.

Robert E. Dunn, Jr., Esq.
Director, Office of Public Policy