



CHRISTOPHER T. SUNUNU
Governor

GOVERNOR'S ADVISORY COUNCIL ON DIVERSITY AND INCLUSION

2018 Legislative and Budgetary Recommendations

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The Governor's Advisory Council on Diversity and Inclusion has conducted 14 public and targeted listening sessions in Claremont, Concord, Conway, Dover, Durham, Keene, Laconia, Lancaster, Manchester, Nashua, Newmarket, and Portsmouth. Members of the public also provided input and feedback to the Council via email and other written submission.

Consistent with Executive Order 2017-09, in 2019, the Council will prepare a full report to summarize and present its complete findings and to make any related recommendations.

However, during its listening sessions, the Council consistently heard from participants, including parents, educators, administrators, students, who raised significant concerns about two particular systems—public education and public transportation. While the Council will address each of these subjects in its forthcoming report, it issues this memorandum to make six discrete recommendations in advance of the upcoming legislative session to address these and related areas of concern.

1. *Legislative recommendation:* The Council received significant feedback at every listening session about persistent discrimination and inequities in schools, and the inadequacy of available resolution and redress processes. This discrimination included, but was not limited to:

- Unequal enforcement of discipline (*e.g.*, race and disability)
- Unequal access to educational opportunities (*e.g.*, race, national origin/language)
- Inability to obtain learning-ability testing (*e.g.*, English language learners)
- Exclusion and segregation (*e.g.*, disability, gender identity, national origin/language)
- Harassment and bullying (*e.g.*, sex, national origin, gender identity, race)
- Lack of compliance with requirements regarding communication access

New Hampshire is one of the only states in the northeast without any state statutory anti-discrimination protection for students. Accordingly, the Council recommends that New Hampshire enact a state statute that prohibits discrimination against students in public schools based on race, color, sex, religion, national origin, mental or physical disability, gender identity, or sexual orientation.

2. Legislative recommendation: In 2018, the legislature amended RSA 354-A to expressly prohibit discrimination based on gender identity. In doing so, the legislature declared that “practices of discrimination against any of its inhabitants because of age, sex, *gender identity*, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.” (emphasis added).

Consistent with this, the Council in its June 1, 2018 preliminary report stated and recommended:

In order for New Hampshire and its communities to fully ensure and protect the civil rights of their transgender and gender non-conforming residents and visitors, all statutes, ordinances, regulations, and policies that reference identity-based classes should be amended to include gender identity as an express protected class, so as to align with the Law Against Discrimination.

Consistent with this recommendation, the Council now recommends that the following statutes be amended to include an express reference to gender identity as a prohibited basis of discrimination. This list is not exhaustive. There are likely other statutes, ordinances, regulations, and policies that are in need of a similar amendment.

Statutory Provisions	Title of Statute	Existing Statutory Language with Amendment in Bold and Italics
RSA 21	[Insert New Section] Statutory construction; Gender Identity and Expression	Insert new section defining “gender identity or expression” as defined in RSA 354-A:2, XIV-e: <i>“Gender identity” means a person’s gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person’s core identity provided, however, that gender-related identity shall not be asserted for any improper purpose.”</i>

<p>RSA 354-B:1, I</p>	<p>Civil Rights Act, Enforcement</p>	<p>All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, <i>gender identity</i>, gender, or disability.</p>
<p>RSA 651:6, I(f)</p>	<p>Sentences; Extended Term of Imprisonment</p>	<p>A convicted person may be sentenced according to paragraph III if the jury also finds beyond a reasonable doubt that such person:</p> <p>Was substantially motivated to commit the crime because of hostility towards the victim’s religion, race, creed, sexual orientation as defined in RSA 21:49, gender identity, national origin or sex;</p>
<p>RSA 21-I:58, I</p>	<p>Department of Administrative Services; Classified Employees; Appeals</p>	<p>Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or disabling condition, or on account of the person’s sexual orientation <i>or gender identity</i>, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee’s former position or a position of like seniority, status, and pay. The employee shall be reinstated without loss of pay, provided that the sum</p>

		shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period.
RSA 151:21, XVI	Residential Care and Health Facility; Patients' Bill of Rights	The patient shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, or source of payment, nor shall any such care be denied on account of the patient's sexual orientation or gender identity .
RSA 151-21-b, II(b)	Residential Care and Health Facility; Patients' Bill of Rights	The statement of rights shall state that at a minimum the client has a right to: ... Receive appropriate and professional care without discrimination based on race, color, national origin, religion, sex, disability, or age, nor shall any such care be denied on account of the patient's sexual orientation or gender identity .
RSA 53-C:3-g	Franchising and Regulation of Cable Television Systems; Rights of Individuals	No cable television system operator shall deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical disability, or country of natural origin, sexual orientation, or gender identity .
RSA 135-C:13	New Hampshire Mental Health Services System; Discrimination Prohibited; Eligibility for Services	Every severely mentally disabled person shall be eligible for admission to the state mental health services system, and no such person shall be denied services because of race, color or religion, sex, or inability to pay sexual orientation, or gender identity . ¹
RSA 135-C:56, IV	New Hampshire Mental Health Services System; Fundamental Rights	No person receiving mental health services shall be discriminated against in any manner because of race, color, sex, religion, national origin, age, disability, or degree of disability, sexual orientation, or gender identity .

¹ Though not within the scope of its recommendation, the Council notes that this statute does not reference national origin.

<p>RSA 167:83, III(e)</p>	<p>New Hampshire Employment Program and Family Assistance Program; Administrative Duties; Rulemaking</p>	<p>The department shall advise persons of the following rights: ... To not be discriminated against because of gender, race, creed, color, sex, sexual orientation, gender identity, age, disability, political affiliation or beliefs, religion, or national origin.</p>
<p>RSA 195-E:14, I</p>	<p>Loan Corporations; Administration of Loans; No Discrimination</p>	<p>The foundation, a qualified educational institution and a loan corporation shall have the full power and authority and be subject to all rights, responsibilities and liabilities for the administration of a loan program and for the distribution and collection of loans to qualified students or their parents, including the determination of who is eligible to receive loans, the amounts of the loans, repayment schedules and interest rates to be charged; provided that the terms are in accordance with law and do not discriminate against any person on account of race, creed, national origin, sex, sexual orientation, gender identity, or age</p>
<p>RSA 204-C:1, X</p>	<p>Housing Finance Authority; Definitions</p>	<p>Eligible persons and families” shall mean a person or persons, and families of 2 or more persons, irrespective of race, creed, national origin or sex, sexual orientation, or gender identity, determined by the authority to require assistance under this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (a) the amount of the total income of such persons and families available for housing needs; (b) the size of the family;</p>
<p>RSA 273-C:10, VI(b)</p>	<p>Dog and Horse Racing Employees; Elections</p>	<p>The board shall decertify any employee organization which is found in a judicial proceeding to discriminate with regard to membership, or with regard to the conditions thereof, because of age, sex, sexual orientation, gender identity, race, color, creed, marital status or national origin; or has systematically failed to allow its membership equal participation in the affairs of the employee organization.</p>

RSA 415-C:7, I(h)	Consumer Guaranty Contracts; Prohibited Acts and Terms	<p>No obligor, its designee, or any other representative of an obligor, including a seller or administrator, shall in connection with the sale, or offer to sell, or any advertisement or in connection with any benefits, advantages, conditions, terms, or services available under a consumer guaranty contract:</p> <p>...</p> <p>Unfairly discriminate based solely on age, place or area of residence, race, color, creed, national origin, ancestry, marital or civil union status, lawful occupation including military service, gender, <i>sexual orientation, gender identity</i>, religion, or blindness or other disability.</p>
RSA 420-C:5	Preferred Provider Agreements; Discrimination Prohibited	<p>No health care insurer shall discriminate against any provider on the basis of religion, race, color, national origin, age, sex, <i>sexual orientation, gender identity</i>, or marital status. Reasonable terms and conditions including, but not limited to, those based on economic or geographic considerations, certain affiliations, or professional privileges shall not be prohibited under this section.</p>
RSA 500-A:4	Jurors; Prohibition of Discrimination	<p>A citizen of this state shall not be excluded from jury service on account of race, color, religion, sex, <i>sexual orientation, gender identity</i>, national origin or economic status.</p>

3. Legislative study recommendation: The Council heard consistent concerns about New Hampshire’s lack of public transportation and how that void in services inhibits residents’ abilities to access critical resources—healthcare, economic opportunities, cultural activities, and social connection. The Council received specific feedback on this point from those who are deaf or hard-of-hearing, visually impaired, developmentally disabled, physically disabled, aging, and/or who are immigrants, people of color, and members of the LGBTQ communities. The Council further notes that the lack of public transportation affects all New Hampshire residents, including those who are lower-income and/or geographically isolated. The Council therefore recommends that the legislature establish a committee to study (1) sustainable state funding for in-state public transportation; and (2) how the State can better assist people with accessing the social, medical, and economic services that they need.

4. *Budgetary recommendation:* The New Hampshire Commission for Human Rights enforces the New Hampshire Law Against Discrimination, RSA 354-A. Pursuant to RSA 354-A, the Commission has the following functions, powers, and duties:

- To receive, investigate and pass upon complaints alleging violations of this chapter.
- To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and, in connection therewith, require the production for examination of any books or papers relating to any matter under investigation or in question before the commission.
- To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purpose of this chapter, and the commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination, because of age, sex, gender identity, race, color, sexual orientation, marital status, familial status, or physical or mental disability, religious creed or national origin.
- To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of age, sex, gender identity, race, color, marital status, familial status, physical or mental disability, religious creed or national origin, and on account of sexual orientation.
- To render biennially to the governor and council a full written report of its activities and of its recommendations.
- To formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or its political subdivisions in aid of such policies and purposes.
- To charge reasonable fees for educational services, programs, publications, and other written materials.

Historically, the Commission's ability to fulfill this charge has been limited, at least in part, because of perpetual underfunding. Funding this essential statewide enforcement work is critical to redressing discrimination and promoting inclusion and equity throughout the state. Therefore, the Council recommends that the State increase funding to the New Hampshire Commission for Human Rights so that it has the resources to fulfill its statutory charge.

5. *Budgetary recommendation:* Throughout the listening sessions, participants consistently cited the lack of learning opportunities and resources regarding diversity, equity, and inclusion as one of the most significant obstacles to even beginning to address inequities throughout New Hampshire. This was especially true in education. New Hampshire must ensure that school administrations, faculties, and students have the resources and knowledge needed to build and maintain an inclusive and equitable learning environment. The Council therefore recommends that the State allocate resources (particularly to the Department of Education) to fund and sustain

the development of additional and ongoing diversity, inclusion, and equity training and resources. This could include, but should not be limited to, expanding upon the existing “cultural competency” workshops offered by the Department of Education and providing ongoing training and resources for trainers.

6. *Membership recommendation:* The Council received significant input from participants who have different abilities and/or disabilities, as well as from those who work with and serve these individuals. This area of law and administrative scheme is very technical and complex. It would therefore be beneficial to the Council’s work to have at least one member with expertise in this area and/or lived experience. The Council therefore recommends that the Governor add a member to this Council with this experience and background.