



CHRISTOPHER T. SUNUNU  
Governor

## Governor's Advisory Council on Diversity and Inclusion

June 2, 2021

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His Excellency Christopher T. Sununu  
Governor of the State of New Hampshire  
State House  
107 North Main Street  
Concord, NH 03301

Dear Governor Sununu,

The Governor's Advisory Council on Diversity and Inclusion ("the Council") writes to express our grave concerns regarding section 330 of the Senate Finance Committee's amendment to HB 2 ("Section 330"), replacing the section on "divisive concepts." The ambiguous and contradictory language and enhanced penalties in this new provision threaten to censor New Hampshire schools, police, and other government agencies from having important conversations about race, gender, sex, and ability. As such, the provision is likely to chill honest, frank, and robust discussions that are central to ongoing efforts to make New Hampshire a more equitable, diverse, and inclusive place.

The language in Section 330 presents many of the same serious concerns the Council expressed in its previous letter recommending you act against HB 544.<sup>1</sup> We greatly appreciate your strong leadership in opposing that standalone bill—publicly and definitively. As you rightly stated, HB 544's restrictions would have censored local school districts, encroached upon local control, and prevented local communities from making their own decisions about how to address difficult topics. We recognize the Senate Finance Committee's attempt to address these concerns. Unfortunately, however, Section 330 does not resolve the Council's concerns and would likely have the same detrimental impact as HB 544.

By its own terms, Section 330 would prohibit state employers and programs from teaching, instructing, or training "any employee, student, service recipient, contractor, staff members, inmate or any other individual or group" three enumerated concepts. Section 330 also targets local public schools with explicit prohibitions that threaten to censor how those local institutions address sensitive issues of race, sex, gender, and ability. These prohibitions include disciplinary sanctions and civil action for violations, including lawsuits brought under RSA chapter 345-A.

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<sup>1</sup> <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/inline-documents/sonh/20210309-hb544-1.pdf>

The prohibited concepts seem to target the use of theories critical to most diversity, equity, and inclusion training. For example, the second of these prohibited concepts appears designed to prohibit the discussion of “unconscious” biases. Social psychologists have long demonstrated, through extensive research, the detrimental impact of implicit or unconscious bias; particularly, when a person lacks the tools to make the unconscious conscious. This concept is central to many trainings used by New Hampshire agencies—including the New Hampshire Council on Police Standards and Training. To prohibit such trainings would undermine years of local and state diversity and inclusion efforts.

Although Section 330 includes exceptions for certain types of “sensitivity training” and university activities in an academic setting, these ambiguous allowances add to the confusion over what is permitted and what is prohibited. In the absence of clarity, schools, police departments, and other agencies are likely to self-censor out of fear of potential civil liability.

Our concern here is not hypothetical. Multiple New Hampshire agencies—including the New Hampshire Business and Industry Association, the Municipal Association, the Office of the Child Advocate, and multiple school districts—have expressed their opposition to the Section 330’s language, making clear how it would negatively impact their constituencies. Several Council members have witnessed the distress experienced by local educators and agencies who fear having to operate under the proposed restrictions.

The Council believes that Section 330 continues to carry the potential to undermine your administration’s recent work to promote diversity and inclusion--including the work done by and recommendations given by the Commission on Law Enforcement Accountability, Community, and Transparency, the COVID-19 Equity Response Team, and this Council.

Honest, robust discussion on significant issues such as racism, sexism, and ableism is important. The Council reiterates its belief that limiting conversations amongst all citizens of New Hampshire is not reflective of our state’s embrace of freedom of speech and freedom of expression. The chilling effect that Section 330 threatens to create will harm the Granite State’s ability to best understand and meet the needs of all its residents. To protect your administration’s work and New Hampshire values, the Council recommends that you act against Section 330, and continue to champion equity, diversity, and inclusion efforts.

As always, we look forward to continuing to work with you to make the State of New Hampshire a more equitable, diverse, and inclusive state, and to protect the rights of all Granite Staters to engage in open and honest dialogue to learn to live together. To that end, the Council would like an opportunity to sit down with you to discuss these issues and more so together we can pursue this important work.

Sincerely,

The Governor’s Advisory Council on  
Diversity and Inclusion