

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to anti-discrimination protection for students in public schools.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*Note that this commentary is  
current as of 4/17/2019

1 1 New Subdivision; Discrimination in Public Schools. Amend RSA 193 by inserting after  
2 section 37 the following new subdivision:

## Discrimination in Public Schools

4 193:38 Discrimination in Public Schools. No person shall be excluded from participation in,  
5 denied the benefits of, or be subjected to discrimination in public schools because of their age, sex,  
6 gender identity, sexual orientation, race, color, marital status, familial status, physical or mental  
7 disability, religion, or national origin, all as defined in RSA 354-A. Any person claiming to be  
8 aggrieved by a discriminatory practice prohibited under this section may initiate a civil action  
9 against a school or school district in superior court for relief at law or at equity. The attorney  
10 general may also initiate a civil action against a school or school district pursuant to this section for  
11 relief at law or at equity.

12 2 New Section; Discrimination Prevention Policy. Amend RSA 193-F by inserting after section  
13 8-a the following new section:

## 193-F:8-b Discrimination Prevention Policy Required.

15 I. Each school district and chartered public school shall develop a policy that guides the  
16 development and implementation of a coordinated plan to prevent, assess the presence of, intervene  
17 in, and respond to incidents of discrimination on the basis of age, sex, gender identity, race, creed,  
18 color, marital status, familial status, physical or mental disability, national origin, or any other  
19 classes protected under RSA 354-A.

20 3 Effective Date. This act shall take effect 60 days after its passage.

Note that this applies to all persons,  
not just students

“Discrimination” i.e. none of these can be the basis for treating that student differently. This could also be interpreted to mean that schools must discipline students who do not use artificial pronouns (schools may be required to punish objecting students).

“at law” typically involves monetary damages, while “at equity” typically means an injunction or some similar remedy. See [link](#). This allows a student to sue a teacher/school district for monetary damages.

What effect would this have on **school sports**? The effect is worth noting, especially since this bill is being pressured through with minimum reflection and discussion.

[Title IX](#) prohibits discrimination based on sex in schools. However, Title IX has been [interpreted](#) to mean that schools *can* discriminate on the basis of sex, but they are required to have “equal” sports opportunities for men and women, including equitable funding, facilities, etc.

This raises the question: if schools are required to provide equal funding for male-sports and female-sports, are they also required to do the same for [each separate gender](#)? Must they, for example, create a “[agender](#)” league if a student so identifies? And if not – why not? Is agender less valuable than male or female?

It is insufficient to respond that an “agender” league might be created if there was a “critical mass” of “agender” students. Is the school disfavoring minority viewpoints? [Grutter v. Bollinger](#) (2003) suggests that schools may use a “critical mass” criteria to create more diversity (in that case, for admissions and race), but seems to imply that a school could not use a “critical mass” criteria to restrict diversity.

**IN BRIEF:** This [act](#) is misleadingly entitled “An Act relative to anti-discrimination protection for *students* in public schools” (emphasis added). This chaotic bill applies to **all persons**, not just students. Note that schools could still discriminate on the basis of *enrolled status*, but could not stop anyone from becoming enrolled on the basis of any one of the enumerated categories. Nor could it stop a man claiming to be a woman from using the same school restrooms as a little girl (say, at a sporting event, etc.).

The language of this bill results in some very odd and/or dramatic consequences, including:

- since the bill “protects” *persons* generally (not just students), anybody of any age could enroll in any class, if [application procedures were properly followed](#).
- there is no age limit on “gender identity,” and thus a 1<sup>st</sup>-grader could sue a school for misgendering them (as well as causing that teacher to [lose his job](#)).
- this bill subjects schools to compromising and [often self-contradicting requirements](#).

-this bill requires school sports teams to allow students to compete on [any team](#) of their choosing, so long as that choice is related to “gender-identity.”  
Listen to CT female athlete Selina Soule tell her story [here](#).

- this bill could also potentially require schools to teach LGBT-oriented history or sex education, [as happened in CA](#).