

## MEMORANDUM

TO: The Honorable Anne Carney, Senate Chair, Joint Standing Committee on Judiciary

FROM: Maine Community College System (“MCCS”)  
University of Maine System (“UMS”)  
Maine School Management Association (“MSMA”)

RE: L.D. 1647, *An Act to Amend the Maine Human Rights Act to Provide Additional Remedies for Educational Discrimination*

DATE: May 13, 2025

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Senator Carney, thank you again for your time this morning to discuss the potential impacts of L.D. 1647 on public education institutions in the state of Maine. We appreciate your willingness to hear our concerns about the bill as it was originally drafted and discuss the suggested revisions we brought forward for your consideration.

As a follow-up from our call, we wanted to send along some additional information, *viz.*, a brief summary of the “bad faith” standard in Maine; information concerning our current insurance coverage with respect to discrimination claims; and our respective policies and procedures for receiving, investigating, and addressing discrimination and harassment complaints as well as accommodation requests.

### A. The Bad Faith Standard Under Maine Law

Given our commitment to getting back to you in a timely manner, we have provided only a brief summary of the bad faith standard as interpreted by Maine courts at this time. As you may know, the Maine Human Rights Act does not provide a statutory definition of “bad faith.” However, in the context of Maine’s Freedom of Access Act, the Law Court recently defined “bad faith,” by looking to the plain meaning of the statute and to Black’s Law Dictionary, noting that the legal dictionary defines the bad faith as “[d]ishonesty of belief, purpose, or motive.” *Human Rights Def. Ctr. v. Me. Cty. Comm’rs Ass’n Self-Funded Risk Mgmt. Pool*, 2023 ME 56; 301 A.3d 782. The court also looked to decisions involving the award of attorney’s fees and noted that such decisions “convey that bad faith in litigation can consist of dishonest conduct, but it can also include intentional acts or omissions that thwart the legal process and cause harm to other parties to the action”. *Id.* At 17.

Additional case references:

- “Bad faith 'imports a dishonest purpose and implies wrongdoing or some motive of self-interest.' Bad faith means 'dishonesty of belief or purpose ....'” *Seacoast Hangar Condo. II Ass’n. v. Martel*, 2001 ME 112 P21, 775 A.2d 1166, 1171-72 (citing a Utah case and Black’s Law Dictionary).

- The burden to prove that the police acted in bad faith in failing to preserve the cell phones. An act of “bad faith” requires more than mere negligence. *State v. Thomas*, 2022 ME 27, 274 A.3d 356.
- It is left to the Court's discretion to determine whether offending conduct rises to the level of “bad faith” such that Rule 56(g) sanctions are warranted. *Fed. Nat’l Mortg. Assoc. v. Bradbury*, 2010 Me. Super. Lexis 156, citing to *Cobell v. Morton*, 214 F.R.D. 13, 20 (D.D.C. 2003) (noting that “as a practical matter a court has wide discretion in deciding what constitutes 'bad faith'” and citing to a First Circuit stating that the matters in which sanctions are imposed involve “particularly egregious” conduct. *Fort Hill Builders, Inc. v. National Grange Mut. Ins. Co.*, 866 F.2d 11 (1st Cir. 1989)).

## B. Insurance Coverage

The following is a summary of existing coverage and limits relating to educational discrimination claims:

### MCCS:

Provider: United Educators (Educators Legal Liability Coverage)

Deductible \$75,000

Coverage limit: \$5,000,000

### UMS:

Provider: United Educators (Educators Legal Liability Coverage)

Deductible: \$200,000 (Self-Insured Retention)

Coverage Limit: \$25,000,000

### MSMA:

We understand MSMA's legal liability coverage for schools/school boards is provided through insurance partners, has a \$1,000,000 per occurrence limit and has a \$4 million shared annual aggregate limit for all members of the plan each year. Deductibles are based on student count, as well as by claims filed. Deductibles range from \$2,500 to \$25,000.

## C. Policies and Procedures

We have provided the respective policies and procedures for receiving, investigation and addressing discrimination, harassment complaints as well as accommodation requests. We believe these documents show the thoroughness and thoughtfulness of the various internal measures our institutions follow:

MCCS (links below):

 [Policy 201.1-202.1 - College Procedure for Discrimination, harassment, Sexual Harassment and Affirmative Action Complaints.pdf](#)

 [Policy 202.2 - Sexual Harassment, Sexual Assault and Other Sex Based Conduct, Relationship](#)

[Violence, and Stalking.pdf](#)

[Policy 214.1 - Service and Assistance Animals.pdf](#)

[Policy 309 - Student Grade Appeals and Academic Misconduct.pdf](#)

UMS:

[Equal Opportunity Complaint Procedures](#)

[Policy Manual – Sex Discrimination, Sexual Harassment, Sexual Assault, Relationship Violence, Stalking and Retaliation and Title IX Sexual Harassment](#)

[Administrative Practice Letter on Emotional Support Animal in Campus Housing](#)

[Appealing Grades and Assignments \(UMaine Specific\)](#)

Procedures for Accommodating Individuals With Disabilities (see attached)

MSMA:

MSMA provides model policies that schools are required to adopt regarding responses to discrimination and harassment, describing the internal procedures that they must take. For example, similar to public higher education, all K-12 school employees are required to report any possible incidents to an Affirmative Action Officer/Title IX Coordinator, and *ACAA-R* details the procedures that schools must take in response to any of these incidents (see attached).

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Thank you for your consideration of this additional information. We maintain that the amended language proposed by MCCS, UMS, and MSMA – including the meaningful cap – will safeguard against educational discrimination while appropriately holding accountable and managing the risk of our public institutions so we can focus limited resources on serving all students.

Should you have any questions, please contact Becky Smith, Director of Government and Community Relations for the Maine Community College System at [bsmith@mainecc.edu](mailto:bsmith@mainecc.edu) or (207) 629-4015 and/or Samantha Warren, Chief External & Governmental Affairs Officer for the University of Maine System at [samantha.warren@maine.edu](mailto:samantha.warren@maine.edu) or (207) 632-0389 and/or Robbie Feinberg, Director of Communications and Government Relations for the Maine School Management Association at [rfeinberg@msmaweb.com](mailto:rfeinberg@msmaweb.com) or (207) 314-6281.