

MEMORANDUM

TO: The Honorable Anne Carney, Senate Chair; the Honorable Amy Kuhn, House Chair; and Members of the 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 28, 2025

We are writing to follow up on last week’s work session on L.D. 1647, *An Act to Amend the Maine Human Rights Act to Provide Additional Remedies for Educational Discrimination*. We support efforts to ensure that schools are free from discrimination and that students have meaningful avenues for redress if discrimination occurs. As public educational institutions, we have detailed policies and procedures and provide ongoing training to ensure that all students may attend and succeed without discrimination. These policies and procedures represent robust grievance, investigation, and resolution processes.

We understand that this bill is in response to the U.S. Supreme Court’s decision in *Cummings v. Premier Rehab Keller, PLLC*, which ruled that emotional distress damages would not be allowed under Section 504 of the Rehabilitation Act and the Affordable Care Act. We appreciate the good intention behind this bill and share the supporters’ commitment to nondiscrimination. However, we remain concerned that the proposed legislation, as currently drafted, would unintentionally and unnecessarily undermine the thoughtful and well-established internal remedies and significantly increase legal and insurance costs that would divert our limited resources away from students and academic programs. For reasons detailed below and given the Committee’s workload at this late date, we recommend the bill be carried over.

The following briefly summarizes our comments on this bill and is aligned with concerns we have shared previously with Senator Carney in conversations and written communications:

Summary of Concerns:

As mentioned during last week’s work session, our primary concerns with the bill are addressed through the following proposed amendments we previously offered in writing: (i) a statutory cap on compensatory damages to protect our public educational institutions from open-ended liability; (ii) requirement that a complaining party first avail themselves of established internal processes to resolve a complaint; and (iii) adding a standard of “bad faith” for a complainant to successfully bring a claim of intentional educational discrimination.

A. Statutory Cap on Compensatory Damages

Consistent with our previous discussions with the sponsor, we would reinforce to the Committee the importance of including a statutory cap of \$100,000 for compensatory damages to protect education institutions and Maine taxpayers from open-ended liability while at the same time providing meaningful redress to a complaining party. Without a meaningful statutory cap, our public institutions will experience increased insurance and legal costs, which would require us to divert limited resources away from educational services, scholarships, and student support services.

Additionally, a statutory cap would discourage frivolous claims, encourage reasonable settlement discussions, and ensure that damages are proportionate and equitable, especially in cases where harm may be difficult to quantify.

B. Exhausting Internal Processes

As mentioned, our public institutions have detailed policies and procedures to address discrimination claims. These are typically grounded in well-established law (like Title IX) and developed through an inclusive process that includes students. We regularly work with students to proactively resolve accommodation requests, and upon receipt of a complaint, provide timely investigation and meaningful resolution of claims of discrimination. We previously shared examples of these procedures with the sponsor and are happy to provide them to the Committee if it would be helpful at this time. These internal processes function to preserve access to public education free of discrimination and these policies and procedures allow our public institutions to thoughtfully and promptly resolve these matters without the need for legal proceedings, which benefit both parties as it avoids prolonged conflict and instead focuses on supporting the student and their educational outcomes. We disagree with the claim made during the work session that these internal processes are a barrier to relief. In fact, they are the most well-established and accessible path to redress, which is why state and federal law has focused on their development and utilization.

C. The Bad Faith Standard

In our recommended revisions to this bill and in comments at the work session, we suggested a standard of “bad faith” in order to bring a claim. Under Maine law, courts have generally interpreted bad faith as requiring a dishonest purpose and implies wrongdoing. We believe that this standard, together with a statutory cap on such damages, strikes the balance between protecting students from discrimination and preserving our education system's core mission and fiscal health.

During the work session, it was mentioned that "bad faith" was understood as a tort standard, not a discrimination standard. For the sake of clarity, however, we would add that bad faith is also a standard used by several appeal circuits in the context of intentional educational discrimination.

We believe that if a claim alleges intentional wrongdoing, it is reasonable to require a minimum showing of bad faith to distinguish from unintentional conduct or an honest mistake.

Further, in the federal courts, determining the appropriate legal standard for claims of intentional education discrimination is currently being considered. Specifically, on April 28, 2025, in the case of A.J. T. v. Osseo Area Schools, the U.S. Supreme Court heard arguments to determine the appropriate standard for a claim of intentional education discrimination under federal law (i.e., the Individuals with Disabilities Education Act and the Americans with Disabilities Act). Given that the highest court in the land is currently deliberating the standard at the heart of LD 1647, we believe this bill may benefit from being carried over to the next legislative session. This would allow all parties to consider the decision of the Court when determining an appropriate standard under Maine law and would give our public institutions and the Legislature additional time to study and structure the potential financial impacts of this bill.

We have attached the proposed amendment to LD 1647 as previously shared with the sponsor for your review as well. 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.

Thank you for your consideration of this information. 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 or (207) 380-9171 and/or Samantha Warren, Chief External & Governmental Affairs Officer for the University of Maine System at 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 or (207) 314-6281.