

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: March 11, 2026

At the conclusion of the First Special Session of the 132nd Maine State Legislature, L.D. 1647, *An Act to Amend the Maine Human Rights Act to Provide Additional Remedies for Educational Discrimination*, was carried over.

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.

We remain concerned that the proposed legislation, as currently drafted, would unintentionally and unnecessarily undermine the thoughtful and well-established internal remedies and would significantly increase legal and insurance costs that would divert our limited resources away from students and academic programs. Additionally, due to the divergent legal requirements for disability accommodations as between K-12 education and post-secondary education, we respectfully ask that you consider excluding the public higher education institutions from the legislation.

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 previously mentioned, our primary concerns with the bill are addressed through the following proposed amendments we previously offered in writing: (Section B) a statutory cap on compensatory damages to protect our public educational institutions from open-ended liability; (Section C) requirement that a complaining party first avail themselves of established internal processes to resolve a complaint; and (Section D) adding a standard of “bad faith” for a complainant to successfully bring a claim of intentional educational discrimination. Additionally, we are bringing forward proposed amendments to (Section A) to define compensatory damages to reflect the *Cummings* decision; and (Section E) to clarify the Maine Human Rights Commission actions regarding right-to-sue notices in the context of complaints alleging intentional educational discrimination.

A. Defining Compensatory Damages to Reflect the Limits Imposed in the *Cummings* Decision

The U.S. Supreme Court ruled in *Cummings v. Premier Rehab Keller, PLLC*, that damages for *emotional distress* are not available under Section 504 of the Rehabilitation Act and the Affordable Care Act. It did not preclude other damages, ones that are currently available under the Maine Human Rights Act. The current list of damages in the bill may be suitable for employment cases; it would be difficult to determine in education cases. Damages for *emotion distress*, as reflected by the *Cummings* decision, are appropriate.

B. 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. \$100,000 is five times the current cap and represents meaningful damages. 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.

C. 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.

D. The Standard for Intentionality

In Spring 2025, we 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. However, U.S. Supreme Court decided, in *A.J. T. v. Osseo Area Schools*, that the standard of deliberate indifference was the appropriate standard under the Americans with Disability Act. Similarly, the federal Appeals Courts have held deliberate indifference as the standard under Title IX. Given these recent holdings, we would recommend aligning LD 1647 with federal law and using the deliberate indifference standard.

E. Maine Human Rights Commission Action

Recognizing the potential increase of Maine Human Rights Commission complaints, especially with damages that may entice contingency-fee attorneys as noted in the GLAD Law testimony of April 28, 2025, we recommend revising 5 M.R.S § 4612 (6) to clarify when the Commission may issue a right-to-sue notice for complaints alleging intentional educational discrimination. The revision allows the Commission to complete its statutorily mandated process, providing all parties with the benefit of the Commission’s work.

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.

L.D. 1647 MCCS MSMA and UMS proposed amendment.

An Act to Amend the Maine Human Rights Act to Provide Additional Remedies for Educational Discrimination

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §4613, sub-§2, ¶B, as amended by PL 2023, c. 263, §1, is further amended by amending subparagraph (7) to read:

(7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or intentional educational discrimination, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$20,000 in the case of the first order under this Act against the respondent, not in excess of \$50,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$100,000 in the case of a 3rd or subsequent order against the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph;

Sec. 2. 5 MRSA §4613, sub-§2, ¶B, as amended by PL 2023, c. 263, §1, is further amended by enacting a new subparagraph (7-A) to read:

(7-A) In cases of intentional educational discrimination, compensatory damages as provided in this subparagraph.

(a) A complaining party may recover compensatory damages for loss of education, loss of educational opportunity, emotional pain, and mental anguish.

(b) Compensatory damages may only be awarded under this subparagraph when the educational institution acts with deliberate indifference to known acts of discrimination or, if the discriminatory practice involves the provision of a reasonable accommodation, the educational institution acts with deliberate indifference in determining whether to make a reasonable accommodation to provide the individual with an equally effective opportunity and would not cause an undue hardship on the operation of the educational institution.

(d) A complaining party must first exhaust all available internal review or complaint procedures provided by the educational institution, and in the instance of K-12 schools, also the Maine Department of Education, before initiating a civil action to pursue compensatory damages as provided in this section.

(e) Compensatory damages awarded for intentional educational discrimination may not exceed \$100,000.00 in a judgment or award against a public school, as defined under Title 20-A, section 1(24), the University of Maine System, and the colleges of the University of Maine System, the Maine Community College System and the colleges of the Maine Community College System, and the Maine Maritime Academy.

(f) Nothing in this subparagraph may be construed to limit the scope of or the relief available under any other state or federal law.

(g) If a complaining party seeks compensatory damages under this subparagraph, any party may demand a trial by jury.

(h) This subparagraph does not apply to recoveries for a practice that is unlawful only because of its disparate impact;

Sec. 3. 5 MRSA §4612, sub-§6, ¶C, as _____ by PL 2023, c. 255, §1, is further amended by enacting a new subparagraph (C) to read:

6. Issuance of right-to-sue letter. The commission may issue a right-to-sue letter only in accordance with this subsection.

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A. If, later than the 180th day after the date a complaint is filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may submit a written request for a right-to-sue letter and the commission shall issue the requested right-to-sue letter. [PL 2023, c. 255, §1 (NEW).]

B. If a complainant submits a written request for a right-to-sue letter before the 180th day after the date a complaint is filed with the commission, the commission shall issue a right-to-sue letter if:

(1) The executive director of the commission determines that the complainant has demonstrated good cause for requesting the right-to-sue letter before the expiration of the 180-day period after the filing of the complaint; and

(2) The executive director of the commission certifies that it is probable that the commission will not be able to conclude its investigation before the 180-day period after the filing of the complaint. [PL 2023, c. 255, §1 (NEW).]

C. In instances of complaints alleging intentional educational discrimination under section 4613, a right-to-sue-letter may be issued only at the conclusion of the procedures of section 4612 subsection 1.

If the commission issues a right-to-sue letter in accordance with this subsection, it shall end its investigation of the complaint unless the executive director of the commission and legal counsel to the commission determine that proceeding with the investigation would achieve the purposes of this chapter, in which case the commission shall continue to investigate the complaint as if it had been filed by an employee of the commission under [section 4611](#).

SUMMARY

This bill modifies provisions of the Maine Human Rights Act to allow a court to award compensatory damages in cases of intentional educational discrimination. Compensatory damages include damages for loss of education, loss of educational opportunity, emotional pain, mental anguish.

The bill specifies that these compensatory damages are only available in cases when the educational institution acts with deliberate indifference to known acts of discrimination or, if the discriminatory practice involves the provision of a reasonable accommodation, the educational institution acts deliberate indifference in determining whether to make a reasonable accommodation to provide the individual with an equally effective opportunity and would not cause undue hardship on the operation of the educational institution.

Compensatory damages are not available in cases in which the practice was unlawful only because of its disparate impact. Compensatory damages in a judgment or award against a public entity are limited to \$100,000.

It also requires the Commission to conclude its procedures under the Act prior to issuing a Right-to-Sue letter for complaints alleging intentional educational discrimination.