

TESTIMONY NEITHER FOR NOR AGAINST

L.D. 965

AN ACT CONCERNING NONDISCLOSURE AGREEMENTS IN EMPLOYMENT

Senator Hickman, Representative Sylvester, and members of the Labor and Housing Committee. I am Steven Bailey, executive director of Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association neither for nor against L.D. 965.

We are neither for nor against this bill because we don't believe it is necessary. Our standard separation and settlement agreements reflect Equal Employment and Opportunity Commission guidance and say nothing in the agreement shall prevent an employee from testifying, assisting or participating in an investigation, hearing or proceeding by the EEOC, the Department of Labor or other relevant regulatory agencies.

We also believe that any attempt or even inference to quash a concern or complaint about discrimination, harassment or retaliation, would appropriately find the light of day in the forum provided by our locally elected School Boards.

The bill also prevents an employer from having an employee, intern or applicant sign an agreement restricting their ability to discuss or report concerns about harassment, discrimination or retaliation. According to our attorneys, they have never seen such an agreement in their dealings with Maine public schools, nor would they expect to because it is anathema to what we stand for as public school leaders.

We have mandatory School Board policy (ACAB-R) around Employee Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures, and we want to underscore that the federal Title IX statute – specifically directed at public schools – is an added protection against the behavior described in this bill.

Board policy states:

“Employees will not be retaliated against for reporting suspected discrimination or harassment, or in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary measures, up to and including discharge.”

Given recent events across the country, we recognize and applaud the passion around these issues. We are neither for nor against because we believe Maine public schools and their leadership have been proactive in this regard, but acknowledge there is always more work to be done.