

Oppose SB 341 – Keep Schools as Accepting & Supportive Places for to All Students to Thrive

Bill Summary: SB 341 creates an unlimited burden on school employees to respond to any parent’s written demand “regarding information relating to their child” within 10 days, with any failure to answer “completely and honestly” subjecting the employee to potential discipline, including termination. Even if an employee makes a “good faith determination” that answering would put the student at “risk or endangerment of physical harm, abuse, or neglect,” there is no exception. Instead, employees must concurrently file a DHHS report within 48 hours. However, as explained in more detail below, this is insufficient to protect students from harm.

SB 341 would endanger all vulnerable youth, not just LGBTQ youth. Students learn best when they feel safe to be themselves and can develop trust with their teachers. Yet, this bill would drive young people away from trusted adults with whom they may feel more comfortable discussing sensitive subjects, especially if they are preparing to have those discussions with their parents. In fact, this bill is antithetical to the New Hampshire DOE’s “One Trusted Adult” campaign,ⁱ which lets students know that if they say something to a teacher, they can trust the teacher will keep it confidential and support the student. Numerous children’s advocacy organizations have expressed that legislation like SB 341 would put children in danger.ⁱⁱ Teens explore their identity in many ways, whether it be their religious beliefs and practices, political views, sexuality, or professional aspirations. While a vast majority of parents only want to do what is best for their child, advocates have made clear that this bill could prompt instances of abuse or neglect should a parent react poorly to the information they have requested about their child.

While concerns of abuse and neglect relate to a variety of scenarios, such as a parent disapproving of the way a student dresses or decides to eat at lunch, LGBTQ youth are especially at risk if SB 341 becomes law. Data collected from over 34,000 LGBTQ youth across the United States has revealed rates of homelessness and housing instability are higher among transgender and nonbinary youth, while more than half (55%) of LGBTQ youth having reported that they ran away from home because of mistreatment or fear of mistreatment due to their LGBTQ identity.ⁱⁱⁱ This bill puts teachers in the middle of what should be private family conversations, not just about sexual orientation & gender identity. What is a teacher supposed to do if one parent asks, “Has my child said anything about their mother’s new partner?” or “Has my child made friends with anyone who belongs to a different religion?” Legislators should respect that students have free expression rights when they are at school, and this required surveillance and reporting will create a chilling environment that will detract from student learning. Our schools should protect all students, including LGBTQ+ students, so they can learn and thrive in a safe environment as their most authentic selves.

SB 341 threatens educators based on vague reporting requirements and requires disclosure even where there would be harm. This bill contains a vague standard with enormous disciplinary exposure, forcing teachers to choose between protecting their student’s privacy and their own jobs. Under this bill, teachers are required to answer parents’ questions about their child in school—which would include their gender identity—“completely and honestly.” While we do not believe a teacher would ever lie to a parent, the standard is vague and leaves the teacher at risk of discipline from the district and state board of education. This bill even goes as far as to require disclosure of the requested information, even when the district or its employee has made a good faith determination that disclosure would put the student at risk or endangerment of physical harm, abuse, or neglect. While a DHHS report must be made in such circumstances, we know that DCYF is overworked and understaffed,^{iv} and that students will not be adequately protected by this process. Our child protection system is already overburdened with the approximately 25,000 calls it receives each year, with some incidents of harm allegedly not being fully addressed.^{v,vi}

The bill also permits discipline—including termination—against a district employee that is deemed to violate this bill’s vague provisions. The result of this discipline, combined with the bill’s ambiguous “completely and honestly”

requirement, will cause districts and their employees to, out of an abundance of caution to avoid the bill's penalties, disclose *all* information concerning students upon request, including information that could be harmful to students at home. The bill also gives parents the “right to appeal a school board's disciplinary action decision to the state board of education, whose decision shall be final,” giving the state board of education the authority of the disciplinary decision. Consistent with current practice that accommodates local control, the state board of education—while it has a role in educator certification—has no authority to challenge local termination decisions.

Bills like SB 341—that open teachers to liability and make it seem like educators are purposely hiding information from parents—cause a distrust in the school community that is not warranted or helpful. Instead, schools should focus on improving parent engagement to best serve New Hampshire's students. Schools work best when parents and educators work together to help students achieve their goals and potential, and SB 341 would come in direct conflict with this objective.

SB 341 violates student privacy. There have been numerous court decisions supporting the notion that students and young persons have a constitutional right to keep certain facts about themselves private. These rulings included students' right to protect their sexual orientation, gender identity, and private medical information. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *Anspach ex rel. Anspach v. City of Philadelphia, Dep't of Pub. Health*, 503 F.3d 256, 261 (3d Cir. 2007); *Gruenke v. Seip*, 225 F.3d 290, 302-03 (3d Cir. 2000); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000); *Doe v. Irwin*, 615 F.2d 1162, 1167-69 (6th Cir. 1980) (determining that a family planning center's provision of information and materials to minors about contraception did not violate parent's constitutional rights, and noting that “[t]he constitutional right of persons who desire to use the services of the Center is the right of personal privacy”); *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005) (concluding that the minor plaintiff student “has sufficiently alleged that she has a legally protected privacy interest in information about her sexual orientation”); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) (concluding that plaintiff had established a deprivation of a clearly established constitutional right concerning the threat to disclose the 18-year-old decedent's suspected sexual orientation).

Parents already have the right to obtain “educational records” under the Family Educational Rights and Privacy Act (“FERPA”), which also protects students against the disclosure of personally identifiable information.^{vii} But SB 341 goes beyond FERPA's requirements by mandating disclosure of information even where it does not exist in an “educational record.” This breadth is even more concerning where disclosure beyond what exists in an “educational record” would violate students' privacy rights even when the disclosure could harm a student's safety and wellbeing.

Moreover, New Hampshire has broader privacy laws than the federal standards and the right to privacy is highly supported by voters in the Granite State. In 2018, New Hampshire voters showed overwhelming support (80%) to add the right to privacy to the state's constitution via the addition of article 2-b.^{viii,ix} Legislators may think they're doing the right thing, but SB 341 risks revealing private information about a student's sexual orientation or gender identity to their parents. Students should feel safe to ‘come out’ on their own terms if and when they are ready. SB 341 would not only violate students' privacy rights, but could open an LGBTQ child to hostility, rejection, and even violence from their parents.

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ⁱ New Hampshire Department of Education, *Press Release: One Trusted Adult program to be implemented throughout NH*, July 2022, available at [One Trusted Adult program to be implemented throughout NH | Department of Education](#)

ⁱⁱ Rick Green, *'Parents' Rights Bill' draws strong debate in NH Senate committee*, May 2022, The Keene Sentinel, available at https://www.sentinelsource.com/news/local/parents-rights-bill-draws-strong-debate-in-nh-senate-committee/article_74ba3aaa-2bea-5db8-8d66-f0884e409ce0.html

ⁱⁱⁱ DeChants, J.P., Green, A.E., Price, M.N., & Davis, C.K. (2021). *Homelessness and Housing Instability Among LGBTQ Youth*. West Hollywood, CA: The Trevor Project. available at [Homelessness Report Final Draft - 11.23.21 \(thetrevorproject.org\)](#)

^{iv} Jason Moon, *Communication Problems, Staffing Shortages, and Public Image Hinder DCYF, Child Advocate Finds*, October 2019, New Hampshire Public Radio, available at [Communication Problems, Staffing Shortages, and Public Image Hinder DCYF, Child Advocate Finds | New Hampshire Public Radio \(nhpr.org\)](#)

^v Michael Lewis, "The Greatest Civil Rights Crisis in NH History," Sept. 18, 2018, NH Business Review, available at <https://www.nhbr.com/the-greatest-civil-rights-crisis-in-nh-history/>. See also *2022 DCYF Data Book, 2023*, New Hampshire Department of Youth & Families, New Hampshire Department of Health & Human Services, available at <https://www.dhhs.nh.gov/sites/g/files/ehbem476/files/documents2/dcyf-data-book-2022.pdf>

^{vi} Casey McDermott, *DCYF Review Identifies Gaps in State's Ability to Respond to Child Abuse, Neglect, Dec 2016*, New Hampshire Public Radio, available at [DCYF Review Identifies Gaps in State's Ability to Respond to Child Abuse, Neglect | New Hampshire Public Radio \(nhpr.org\)](#)

^{vii} [See Family Educational Rights and Privacy Act \(FERPA\), 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00, et seq.](#)

^{viii} David M. Poell, *New Hampshire Voters Enshrine Right to Privacy in State's Constitution: Live Free or Die Trying*, November 2018, The National Law Review, available at [New Hampshire Includes Right to Privacy in Constitution \(natlawreview.com\)](#)

^{ix} [See N.H. Const. pt. I, art. 2-b](#)