Statement by Chris Erchull, Senior Staff Attorney and Michael Haley, Staff Attorney
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New Hampshire Outright
in OPPOSITION to Senate Bill 430,
An Act Relative to Mandatory Disclosure by School District Employees to Parents

Honorable Chair Ward and Members of the Committee:

Thank you for taking the time to consider our statement in **opposition** to Senate Bill 430, An Act Relative to Mandatory Disclosure by School District Employees to Parents. **Senate Bill 430 is harmful legislation that must not become law.**

As representatives of GLBTQ Legal Advocates and Defenders (GLAD Law), New England's leading legal rights organization dedicated to ensuring equality for LGBTQ people and people living with HIV, and New Hampshire Outright, an organization that has served, supported, and advocated for LGBTQ youth in New Hampshire since 1993, we are deeply opposed to legislation that invades the privacy of LGBTQ youth. GLAD Law submits this written testimony to highlight several important points to underscore our opposition.

1. **The "completely and honestly" and "material" standards articulated in Senate Bill 430 is vague and unworkable.**

Senate Bill 430 requires educators to respond "completely and honestly" within 10 business days to all written inquiries by parents regarding "material" information relating to their child enrolled at the educator's school. A straightforward bill could simply prohibit lying to parents, but instead SB 430 goes much further. It is unclear how this "completely and honestly" standard would be applied. The responsibility to provide honest and complete information must be imputed to a single individual (the educator contacted by a parent) when any number of people working in the school may encounter information about a student at school. It would be impossible for any one individual to be charged with having every piece of information to meet the "completely and honestly" standard.

Moreover, Senate Bill 430 provides no guidance on what constitutes "material" information. Black's Law Dictionary definitions of "material" include "[h]aving some logical connection with the consequential facts" and "[o]f such a nature that knowledge of the item would affect a person's decision-making." But these definitions provide no clarity to educators or parents, because it is unclear what consequential facts or decision-making might be at issue.

These undefined standards are invitations to excessive litigation. The mode of enforcement in Senate Bill 430 is investigation and licensure action against educators who are alleged, in any particular case to not have responded "completely and honestly" with "material" information. This will tie up educators and the State in disciplinary proceedings devoted to litigating these vague and undefined standards.

Importantly, any attempt to meet the "honestly and completely" standard for any and all information that might prove to be "material" would require monitoring student activity and storing that

information in a centralized database to which all school personnel have access. An Orwellian surveillance repository is the only way that an educator can accomplish the task of reporting "honestly and completely" to parents whenever parents ask questions about "material" information relating to a student at school.

2. The "safeguards" in Senate Bill 430 are insufficient to protect students from potential harm that could be caused by excessive disclosure to parents.

Instead of a presumption that school personnel should ***avoid*** interfering in intimate family affairs, Senate Bill 430 provides only a narrow exception from its notification mandates only where the educator determines "in good faith [that a] complete and honest response would put the student at imminent risk of physical harm, abuse, or neglect." In such a case, the educator is directed to file a report with the Department of Health and Human Services in accordance with RSA 169-C:30. But RSA 169-C:30 authorizes only the investigation of ***past*** harm, abuse, or neglect (which educators are already required to report under RSA 169-C:29). The Department will have no basis to take action on a report of possible future harm, abuse, or neglect that is speculative and hypothetical.

Nor is it reasonable to expect educators to be fortune tellers attempting to divine what information will cause a parent who has not previously been abusive to become abusive in the future. Indeed, evidence of past abuse and neglect is insufficient, taken alone, to predict potential harm that might come to an LGBTQ student. One in four parents (28%) self-report that they would not be understanding if their child came out to them as transgender or nonbinary. Morning Consult, U.S. Adults' Personal Knowledge and Comfort with LGBTQ Identities Polling Analysis, at 13 (Mar. 2022). By these parents' admission, they would not be prepared to provide a safe and supportive environment for their children. Of course, with proper community supports (including from faith-based institutions, healthcare providers, community, and more), many parents who are uncomfortable at first will quickly adapt to be supportive to their children. And public schools can and do play an important role in helping families connect with those resources, including other parents who have shared experiences. But notification requirements undermine the ability of schools to play a supportive role for the families of LGBTQ students.

The narrow exception also overlooks many harms that could come to students beyond direct abuse at the hands of their parents. In some cases, the mere fear or perception of rejection or abuse can be sufficient to cause serious harm to a young person. In 1997, a Pennsylvania police officer happened upon a young man named Marcus Wayman with his boyfriend in a parked car. The police officer knew Marcus and told him that he was going to tell his family about his homosexuality. Because of that threat, Marcus told his boyfriend that he was going to take his own life, which is exactly what he did after he was released from police custody. Marcus's family sued the police department on the theory that the officer should have known that the threat of disclosure of such deeply private personal information could result in serious harm to Marcus. And the federal Court of Appeals for the Third Circuit ruled that "the law is clearly established that matters of personal intimacy are protected from threats of disclosure by the right to privacy." ***Sterling v. Borough of Minersville***, 232 F.3d 190 (3d Cir. 2000).

This case is very important for several reasons. A government employee came into contact with personal information about a young person, just as school staff do every day. And the officer did not even have the chance to disclose any information—he merely threatened to do so. But that threat

was enough to cause serious, even tragic, harm to that young man and his family. There is no suggestion that the family would have been anything but supportive of Marcus—what mattered in this case was the impact that the threat had on Marcus.

Educators must be able to evaluate individual circumstances to make a determination about what is best in a given situation. Senate Bill 430 would deprive them of the flexibility to make a determination about what is best for a specific student under specific circumstances and require them to insert themselves into intimate family affairs.

3. **School policy is a matter of local control and SB 430 undermines the ability of democratically elected school boards to institute policies to protect LGBTQ students.**

Senate Bill 430's interference in school policies undermines local control of education. Local control is a core feature of American governance because it allows the people closest to an issue to have a greater say in its resolution. For example, school boards with regular public meetings are intimately familiar with the issues facing their school communities and are accordingly best positioned to make policies responding to those issues. Thoughtful, nuanced policy, generated by local school boards in response to their community needs exemplifies local control at its best. If SB 430 became law, it would supersede this local control with a clumsy, one-size-fits-all approach that does not meet the needs of New Hampshire's communities.

For these reasons and many more, we urge the Committee to reject this attack on LGBTQ students. Please vote ITL on SB 430.

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