

HB 1419-FN - AS INTRODUCED

2024 SESSION

24-2384
02/08

HOUSE BILL ***1419-FN***

AN ACT relative to prohibiting obscene or harmful sexual materials in schools.

SPONSORS: Rep. Cordelli, Carr. 7; Rep. Bernardy, Rock. 36; Rep. Noble, Hills. 2; Rep. K. Perez, Rock. 16; Rep. A. Lekas, Hills. 38; Rep. Mazur, Hills. 44; Rep. Seidel, Hills. 29; Rep. Ammon, Hills. 42; Rep. Quaratiello, Rock. 18; Sen. Avard, Dist 12

COMMITTEE: Education

ANALYSIS

This bill prohibits material that is obscene or harmful to minors in schools and creates a procedure for removal and cause of action.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to prohibiting obscene or harmful sexual materials in schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Justifiable and Non-Commercial Private Dissemination. Amend RSA 650:4, I to read as
2 follows:

3 I. Institutions or persons having scientific, **higher** educational, governmental or other
4 similar justification for possessing obscene material; or

5 2 New Subdivision; Prohibition of Materials Harmful to Minors in Schools.. Amend RSA 189 by
6 inserting after section 74 the following new subdivision:

7 Prohibition of Materials Harmful to Minors in Schools.

8 189:75 Definitions.

9 I. For the purpose of this subdivision:

10 (a) “Educator” shall mean a professional employee of any school district whose position
11 requires certification by the state board pursuant to RSA 189:39. Administrators, educational
12 specialists, and teachers are included within the definition of this term.

13 (b) “Higher education” shall mean any institution in the university system of New
14 Hampshire or community college system of New Hampshire.

15 (c) “Material” means any printed matter, visual presentation, web-based content, live
16 performance, or sound recording including, but not limited to, books, magazines, motion picture
17 films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances, or
18 other representation.

19 (d) “Nudity” shall mean the showing of the human male or female genitals, pubic area,
20 or buttocks with less than a fully opaque covering; or the showing of the female breast with less than
21 a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered
22 male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby shall not under any
23 circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or
24 incidental to feeding.

25 (e) “Sadomasochistic abuse” shall mean flagellation or torture by or upon a person or
26 animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose
27 of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from
28 inflicting harm on another or receiving such harm oneself.

29 (f) “Sexual conduct” shall mean actual or simulated sexual intercourse, deviate sexual
30 intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd
31 exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic

1 area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual
2 desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual
3 battery is being or will be committed. A mother's breastfeeding of her baby shall not under any
4 circumstance constitute "sexual conduct."

5 (g) "Sexual excitement" means the condition of the human male or female genitals when
6 in a state of sexual stimulation or arousal.

7 II. For purposes of this subdivision, material is harmful to minors when:

8 (1) Taken as a whole, it predominantly appeals to the prurient, shameful, or morbid
9 interest of minors;

10 (2) The material depicts or describes nudity, sexual conduct, sexual excitement, or
11 sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult
12 community with respect to what is suitable for minors;

13 (3) The material lacks serious literary, scientific, medical, artistic, or political value
14 for minors; and

15 (4) The material is inappropriate to the age of the minors to whom it is being made
16 available or presented.

17 III. No school or school district, person employed by a school or a school district, or person
18 who contracts with a school or school district shall provide or make available, to any minor student,
19 any material that is harmful to minors.

20 189:76 Complaint Process.

21 I. No later than November 1, 2025, each local school board shall adopt a complaint
22 resolution policy consistent with this section to be used to address complaints submitted by parents
23 or guardians alleging that material that is harmful to minors has been provided or is currently
24 available to a student enrolled in the local school system who is the child of such parent or guardian.
25 The policy shall be posted on the district web site. The complaint resolution process shall at a
26 minimum require that:

27 (a) Complaints be submitted in writing to the principal of the school where the student
28 is enrolled; and

29 (b) Complaints shall provide a reasonably detailed description of the material that is
30 alleged to be harmful to minors.

31 II. Within 14 calendar days of receiving a written complaint unless another time frame is
32 mutually agreed upon, the school principal or his or her designee shall review the complaint and
33 take reasonable steps to investigate the allegations in the complaint, including, but not limited to,
34 reviewing the material that is alleged to be harmful to minors, if it is available and meeting with the
35 parent or guardian who submitted the complaint.

36 III. The school principal or his or her designee shall determine whether the material that is
37 the subject of the complaint is harmful to minors.

1 IV. The school principal or his or her designee shall determine whether student access to the
2 material that is the subject of the complaint shall be removed or restricted.

3 V. Within 10 school days of receiving the complaint, unless another schedule is mutually
4 agreed to by the parent or permanent guardian and the school principal or his or her designee, the
5 school principal or his or her designee shall inform the parent or guardian in writing as to whether
6 the material that is the subject of the complaint was determined to be harmful to minors, and
7 whether student access to such material will be removed or restricted. If access to the material is
8 determined to be removed or restricted for any student beyond the student who is the child of the
9 parent or guardian, then notice of such restrictions shall be provided to the parents or guardians of
10 all affected students.

11 VI. Appeals of determinations by the principal or his or her designee provided for in
12 paragraphs IV and V of this section shall be filed with the local school board within 14 calendar days
13 of the determination by the school principal or his or her designee. As part of the appeal process, the
14 local school board shall permit the parent or guardian to provide input as part of the agenda at a
15 regularly scheduled board meeting. Unless another time frame is mutually agreed upon by the
16 parent or guardian and the local school board the review and final disposition of the appeal by the
17 local school board shall be completed within 30 calendar days of receiving the written appeal.
18 Appeals referenced in this paragraph may be filed by any aggrieved parent or guardian, including a
19 parent or guardian who is not the original complainant, but who is the parent or guardian of a
20 student for whom access to material is determined to be removed or restricted.

21 VII. An aggrieved parent or guardian may appeal the local school board decision to the state
22 board of education who shall hear the appeal pursuant to RSA 21-N:11, III. Such appeal must be
23 filed within 30 calendar days of the decision of the local school board. An aggrieved parent or
24 guardian may include a parent or guardian who is not the original complainant but who is the
25 parent or guardian of a student for whom access to material is determined to be removed or
26 restricted.

27 189:77 Enforcement and Penalties.

28 I. Either the attorney general, department of education, or any person claiming to be
29 aggrieved by a violation of sections 75 or 76 of this subsection may initiate a civil action against a
30 school or school district in superior court for legal or equitable relief for violations of sections 75 or 76
31 of this subsection, provided that such actions shall be limited to claims that a school or school
32 district has not adhered to the complaint process in RSA 189:76 or that material complained of
33 pursuant to RSA 189:76 continues to be made available to a minor student in a manner inconsistent
34 with any final determination made pursuant to RSA 189:76.

35 II. Any petitioner, if successful, shall be awarded special or general damages of not less than
36 \$1,000 for each violation, and costs and reasonable legal fees. Such damages, costs, and fees shall be
37 in addition to equitable relief awarded.

1 III. Violation of RSA 189:75 paragraph III by an educator shall be considered a violation of
2 the educator code of conduct that justifies disciplinary sanction by the state board of education, but
3 only if such violation occurs after a final determination that the material is involved is harmful to
4 minors pursuant to RSA 189:76 and involves the provision of such material to a minor student in
5 violation of any final determination made pursuant to RSA 189:76. For purposes of this paragraph,
6 a determination is final once all appeals are exhausted or when the deadline for an appeal has
7 expired.

8 3 Effective Date. This act shall take effect January 1, 2025.

HB 1419-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to prohibiting obscene or harmful sexual materials in schools.

FISCAL IMPACT: ☒ **State** ☐ **County** ☒ **Local** ☐ **None**

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
Revenue Fund(s)	None			
Expenditures	\$0	Indeterminable		
Funding Source(s)	General Fund			
Appropriations	\$0	\$0	\$0	\$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ See Below
- Does this bill authorize new positions to implement this bill? ☒ N/A

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable		

METHODOLOGY:

This bill, effective January 1, 2025, prohibits schools, school districts, an employee of a school or school district, or a contractor of a school or school district from disseminating materials that the statute defines as harmful to minor student and requires school boards to adopt complaint resolution policies to address complaints regarding harmful material by parents or guardians. This bill authorizes the Attorney General to enforce the legislation through a civil action against a school or school district. If successful as the petitioner in a civil enforcement action, the Attorney General shall be awarded damages of no less than \$1,000 for each violation and costs and reasonable legal fees. The Department of Justice states bringing these enforcement actions would place increased demands on the Department and result in increased litigation costs. The Department cannot anticipate how many enforcement actions may be brought under the legislation or the resources needed to bring such actions. Accordingly, the Department indicates that the fiscal impact cannot be determined.

The Department of Education states it cannot estimate this bill's impact on local school districts, if any. Any impact could vary from district to district.

AGENCIES CONTACTED:

Department of Justice and Department of Education