Introduced by Representative Larson of Burlington

Referred to Committee on

Date:

Subject: Education; bullying

Statement of purpose: This bill proposes to expand the definitions of “harassment” and “bullying” in the educational context to include actions committed electronically. It would permit school administrators to discipline students for actions conducted outside normal school hours and off school grounds where the conduct can be shown to pose a clear and substantial interference with another student’s right to access educational programs. The bill would authorize the human rights commission to ensure educational institutions comply with procedures required in connection with allegations of harassment and would clarify the legal standard required to prove harassment in a civil action. Finally, it would create a new full-time, limited service position within the human rights commission to direct harassment and bullying prevention and response training initiatives.

An act relating to harassment and bullying in educational settings

It is hereby enacted by the General Assembly of the State of Vermont:
**Harassment and Bullying;**

**Electronic and Nonschool Activities**

Sec. 1. 16 V.S.A. § 11(a)(26)(A) is amended to read:

(26)(A) “Harassment” means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

Sec. 2. 16 V.S.A. § 11(a)(32) is amended to read:

(32) “Bullying” means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

(A) is repeated over time;

(B) is intended to ridicule, humiliate, or intimidate the student; and

(C)(i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or
(ii) does not occur during the school day on school property, on a
school bus, or at a school-sponsored activity and can be shown to pose a clear
and substantial interference with another student’s right to access educational
programs.

Sec. 3. 16 V.S.A. § 1162 is amended to read:

§ 1162. SUSPENSION OR EXPULSION OF PUPILS

(a) A superintendent or principal may, pursuant to policies adopted by the
school board that are consistent with state board rules, suspend a pupil for up
to 10 school days or, with the approval of the board of the school district, expel
a pupil for up to the remainder of the school year or up to 90 school days,
whichever is longer, for misconduct:

(1) on school property, on a school bus, or at a school-sponsored activity
when the misconduct makes the continued presence of the pupil harmful to the
welfare of the school or for misconduct;

(2) not on school property, on a school bus, or at a school-sponsored
activity where direct harm to the welfare of the school can be demonstrated; or

(3) not on school property, on a school bus, or at a school-sponsored
activity where the misconduct can be shown to pose a clear and substantial
interference with another student’s equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or
principal, subject to subsequent due process procedures, from removing
immediately from a school a pupil who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a pupil who brings a weapon to school pursuant to section 1166 of this title.

(b) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

* * * Harassment; Human Rights Commission * * *

Sec. 4. 9 V.S.A. § 4553(a) is amended to read:

(a) To carry out its duties, the commission may:

* * *

(6)(A) enforce conciliation agreements and prohibitions against discrimination by bringing an action in the name of the commission seeking any of the following:

(i) temporary or permanent injunctive relief in the public interest and for an individual aggrieved by unlawful discrimination or on behalf of an aggrieved individual or class of individuals similarly situated;

* * *

Sec. 5. 9 V.S.A. § 4553(d) is added to read:

(d) Annually, the commission and the commissioner of education shall jointly inform superintendents and principals of the obligation of educational
institutions to comply fully with the procedures in 16 V.S.A. §§ 14 and 565 regarding harassment as defined in 16 V.S.A § 11(a)(26). If an educational facility is in violation of the required procedures, then the commission may bring an action to enforce compliance by seeking a declaratory judgment and injunctive relief, including a civil penalty of not more than $5,000.00 per violation.

Sec. 6. 16 V.S.A. § 14(b) is amended to read:

(b) In regard to claims brought pursuant to 9 V.S.A. chapter 139, if after notice, (1) After receiving notice as required under subsection (a) of this section, if the educational institution finds that the alleged conduct occurred and that it constitutes harassment, then the educational institution shall take prompt and appropriate remedial action reasonably calculated to stop the harassment.

(2) No action shall be brought pursuant to 9 V.S.A. chapter 139 until the administrative remedies available to the claimant under the policy adopted by the educational institution pursuant to subsection 166(e) or 565(b) of this title or pursuant to the harassment policy of a postsecondary school have been exhausted. Such a showing shall not be necessary unless the claimant demonstrates that:

(A) the educational institution does not maintain such a policy;
(B) a determination has not been rendered within the time limits established under subdivision 565(b)(1) of this title;

(C) the health or safety of the complainant would be jeopardized otherwise;

(D) exhaustion would be futile; or

(E) requiring exhaustion would subject the student to substantial and imminent retaliation.

Sec. 7. 9 V.S.A. § 4506 is amended to read:

§ 4506. ENFORCEMENT; CIVIL ACTION

(a) A person aggrieved by a violation of this chapter may file a charge of discrimination with the human rights commission pursuant to chapter 141 of this title or may bring an action for injunctive relief and compensatory and punitive damages and any other appropriate relief in the superior court of the county in which the violation is alleged to have occurred.

(b) To prevail in an action alleging unlawful harassment filed pursuant to this chapter, an aggrieved individual must prove that:

(1) he or she was subjected to unwelcome conduct based on his or her membership in a category protected by law; and

(2) the conduct was either so severe or so pervasive that, when viewed from a reasonable person’s standard, it substantially and adversely affected the individual’s equal access to any of the accommodations, advantages, facilities,
and privileges of the place of public accommodation or the terms, conditions,
or privileges of the sale or rental of real property.

(b) The court may award costs and reasonable attorney’s fees to an
aggrieved person who prevails in an action brought under subsection (a) of this
section.

(e) The human rights commission may bring an action in the name of
the commission to enforce the provisions of this chapter in accordance with its
powers established in chapter 141 of this title.

(d) The initiation or completion of an investigation by the human rights
commission shall not be a condition precedent to the filing of any lawsuit for
violation of this chapter.

Sec. 8. HUMAN RIGHTS COMMISSION POSITION

(a) Contingent upon the ability of the human rights commission to obtain
grant funding, the following limited service position is created in the
commission: one full-time, exempt training director to create and manage
harassment and bullying prevention and response initiatives designed to
educate trainers to work with school districts throughout the state.

(b) At least once annually, the training director shall consult with the
commissioner of education regarding the training needs of and appropriate
curricula to be delivered to educators in Vermont.
Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

Sec. 1. 16 V.S.A. § 14 is amended to read:

§ 14. HARASSMENT; NOTICE AND RESPONSE

(a)(1) An educational institution that receives actual notice of alleged conduct that may constitute harassment shall promptly investigate to determine whether harassment occurred. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy, including its harassment investigation procedure, to the alleged victim and the alleged perpetrator. If either the alleged victim or the alleged perpetrator is a minor, the copy of the policy shall be provided to the person’s parent or guardian.

Nothing herein shall be construed to prohibit educational institutions from investigating and imposing disciplinary consequences upon students for misconduct. Elementary and secondary school officials shall strive to implement the plan developed in accordance with subdivision 1161a(a)(6) of this title in order to prevent misconduct from escalating to the level of harassment.

(b) In regard to claims brought pursuant to 9 V.S.A. chapter 139, if

(2) If, after notice, the educational institution finds that the alleged conduct occurred and that it constitutes harassment, the educational institution
shall take prompt and appropriate remedial action reasonably calculated to stop the harassment. No action shall be brought.

(b) A claim may be brought under the Fair Housing and Public Accommodations Act pursuant to 9 V.S.A. chapter 139 until only after the administrative remedies available to the claimant under the policy adopted by the educational institution pursuant to subsection 166(e) or 565(b) of this title or pursuant to the harassment policy of a postsecondary school have been exhausted. Such a showing shall not be necessary where the claimant demonstrates that: (1) the educational institution does not maintain such a policy; (2) a determination has not been rendered within the time limits established under subdivision 565(b)(1) of this title; (3) the health or safety of the complainant would be jeopardized otherwise; (4) exhaustion would be futile; or (5) requiring exhaustion would subject the student to substantial and imminent retaliation.

(c) To prevail in an action alleging unlawful harassment filed pursuant to this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the following:

(1) The student was subjected to unwelcome conduct based on the student's or the student's family member's actual or perceived membership in a category protected by law by 9 V.S.A. § 4502.
(2) The conduct was either so pervasive, or so severe and the cause of a continuing hostile environment, that when viewed from a reasonable person’s standard, it substantially and adversely affected the student’s equal access to educational opportunities or benefits provided by the educational institution.

(2) The conduct was either:

(A) for multiple instances of conduct, so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student’s equal access to educational opportunities or benefits provided by the educational institution; or

(B) for a single instance of conduct, so severe that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student’s equal access to educational opportunities or benefits provided by the educational institution.

(d) As used in this section:

(1) “Designated employee” means an employee who has been designated by an educational institution to receive complaints of harassment pursuant to subdivision 565(c)(1) of this title or in accordance with the harassment policy of a postsecondary school.
(2) “Educational institution” means a Vermont public or independent school or a postsecondary school that offers or operates a program of college or professional education for credit or degree in Vermont.

(3) “Notice” means a written complaint or oral information that harassment may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the harassment, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. If the complaint is oral, the designated employee shall promptly reduce the complaint to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant.

Sec. 2. HUMAN RIGHTS COMMISSION

(a) The human rights commission is encouraged to apply for grant funding to provide training regarding harassment and bullying prevention and response initiatives designed to educate trainers to work with school districts throughout the state.

(b) At least once annually, the human rights commission shall consult with the commissioner of education regarding the training needs of and appropriate curricula to be delivered to educators in Vermont.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.