

1 H.412

2 Introduced by Representative Larson of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Education; bullying

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

18 An act relating to harassment ~~and bullying~~ in educational settings

19 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~~

1 ~~(ii) does not occur during the school day on school property, on a~~
2 ~~school bus, or at a school-sponsored activity and can be shown to pose a clear~~
3 ~~and substantial interference with another student's right to access educational~~
4 ~~programs.~~

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

6 § 1162. SUSPENSION OR EXPULSION OF PUPILS

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

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

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

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

20 (b) Nothing contained in this section shall prevent a superintendent or
21 principal, subject to subsequent due process procedures, from removing

1 ~~immediately from a school a pupil who poses a continuing danger to persons or~~
2 property or an ongoing threat of disrupting the academic process of the school,
3 or from expelling a pupil who brings a weapon to school pursuant to section
4 1166 of this title.

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

8 * * * Harassment; Human Rights Commission * * *

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

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

11 * * *

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

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

18 * * *

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

20 (d) Annually, the commission and the commissioner of education shall
21 jointly inform superintendents and principals of the obligation of educational

1 ~~institutions to comply fully with the procedures in 16 V.S.A. §§ 14 and 565~~
2 ~~regarding harassment as defined in 16 V.S.A § 11(a)(26). If an educational~~
3 ~~facility is in violation of the required procedures, then the commission may~~
4 ~~bring an action to enforce compliance by seeking a declaratory judgment and~~
5 ~~injunctive relief, including a civil penalty of not more than \$5,000.00 per~~
6 ~~violation.~~

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

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

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

20 (1)(A) the educational institution does not maintain such a policy;

1 ~~(2)(B) a determination has not been rendered within the time limits~~
2 established under subdivision 565(b)(1) of this title;

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

5 ~~(4)(L) exhaustion would be futile; or~~

6 ~~(5)(E) requiring exhaustion would subject the student to substantial~~
7 and imminent retaliation.

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

9 § 4506. ENFORCEMENT; CIVIL ACTION

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

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

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

19 (2) the conduct was either so severe or so pervasive that, when viewed
20 from a reasonable person's standard, it substantially and adversely affected the
21 individual's equal access to any of the accommodations, advantages, facilities,

1 ~~and privileges of the place of public accommodation or the terms, conditions,~~
2 ~~or privileges of the sale or rental of real property.~~

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

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

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

12 Sec. 8. HUMAN RIGHTS COMMISSION POSITION

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

18 ~~(b) At least once annually, the training director shall consult with the~~
19 ~~commissioner of education regarding the training needs of and appropriate~~
20 ~~curricula to be delivered to educators in Vermont.~~

1 ~~Sec. 9. EFFECTIVE DATE~~

2 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.