

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:

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)~~(D) 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.