

No. 140. An act relating to harassment in educational settings.

(H.412)

It is hereby enacted by the General Assembly of the State of Vermont:

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:

(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.

Approved: May 15, 2012