

NO. 91. AN ACT RELATING TO HARASSMENT IN SCHOOLS.

(H.113)

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

Sec. 1. LEGISLATIVE INTENT

In enacting this legislation, it is the intent of the General Assembly to:

(1) clarify the definition of harassment;

(2) encourage education and training of teachers and school personnel on harassment issues;

(3) recognize that students should be free of harassment in educational institutions;

(4) recognize that educational institutions should have the opportunity to remedy promptly and appropriately allegations of harassment; and

(5) foster communication in educational institutions.

Sec. 2. 16 V.S.A. § 11(a)(26) is amended to read:

(26)(A) “Harassment” means ~~unlawful harassment which constitutes a form of discrimination. It means~~ an incident or incidents of verbal, written, visual, or physical conduct 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, or disability and which 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.

(B) “Harassment” includes conduct which violates subdivision (A) of this subdivision (26) and constitutes one or more of the following:

(i) Sexual harassment, which is also a form of unlawful harassment and means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

~~(A)(I)~~ Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.

~~(B)(II)~~ Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

~~(C)~~ The conduct has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment.

(ii) Racial harassment, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to racial customs.

(iii) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student's or a student's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

Sec. 3. 16 V.S.A. § 14 is added to read:

§ 14. HARASSMENT; NOTICE AND RESPONSE

(a) 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 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 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 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) 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. 4. 16 V.S.A. § 565 is amended to read:

§ 565. HARASSMENT AND HAZING PREVENTION POLICIES

\* \* \*

(b) Each school board shall develop, adopt, ensure the enforcement of, and make available in the manner described under subdivision 563(1) of this title harassment and hazing prevention policies which shall be at least as stringent as model policies developed by the commissioner. In this section, the definitions of educational institution, organization, pledging, and student shall be the same as those in section 140a of this title.

(1) The harassment prevention policy shall include:

\* \* \*

(C) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

\* \* \*

(E) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (c)(1) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

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(f) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred, or believes that although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem, shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the

commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the independent school or school board.

(6) Nothing in this subsection shall prohibit the school district from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

Sec. 5. 16 V.S.A. § 1161a(a)(6) is amended to read:

§ 1161a. DISCIPLINE

(a) Each public and each approved independent school shall adopt and implement a comprehensive plan for responding to student misbehavior. To the extent appropriate, the plan shall promote the positive development of youth. The plan shall include:

\* \* \*

(6) a description of behaviors on and off school grounds which constitute misconduct, including harassment and hazing, particularly those behaviors which may be grounds for expulsion. The plan shall include a description of misconduct as listed in subdivisions 11(a)(26)(A)-(C) of this title which, although serious, does not rise to the level of harassment as that term is defined therein; and

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