

Racial Harassment in Vermont Public Schools: *A Progress Report*

**Vermont Advisory Committee to
the U.S. Commission on Civil Rights**

October 2003

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Racial Harassment in Vermont Public Schools:
A Progress Report

Letter of Transmittal

Vermont Advisory Committee to
the U.S. Commission on Civil Rights

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The Vermont Advisory Committee submits this report, *Racial Harassment in Vermont Public Schools: A Progress Report*, as part of its responsibility to advise the Commission on civil rights issues in the state. The Committee approved this report in a vote of 13 to 0, 1 abstention.

Beginning in the mid-1990s, the Committee received allegations that a racially hostile environment and discrimination were widespread throughout the state's school system. Despite state law requiring local school boards to adopt policies and procedures to address harassment, many did not comply. Following a two-day forum in November 1997 designed to address these issues, the Committee released its report, *Racial Harassment in Vermont Public Schools*, in February 1999. Concluding that racial harassment was both frequent and common across all grade levels and that school personnel were ill equipped and poorly trained to respond appropriately to incidents, the Committee recommended sweeping changes requiring action by the Vermont Department of Education (VDOE), local school boards, and public officials. Once released, the report resonated within the civil rights community and served as a definitive reference on the topic. In the years after the report's release, a groundswell of positive activity occurred through advocacy organizations, education officials, church groups, and parents to better monitor school tension, ensure safe learning environments, and act upon the Committee's recommendations. A few examples include:

- Former Governor Howard Dean's pledge to create a statewide tone condemning racism in Vermont schools and communities. This was followed by the unprecedented acknowledgment by former VDOE commissioner Mark Hull that harassment exists in the schools and that state agencies should coordinate their efforts to eliminate hazing and bullying and to address safety concerns.
- Enactment of a new state law, modeled after many of the Committee's recommendations, requiring school boards to adopt model harassment and hazing prevention policies.
- Creation of a School Civility Project by VDOE to address harassment and discrimination based on race, sex, sexual orientation, or ability in the schools.
- Renewed commitment and coordination among state education associations for corrective measures to ease school tensions, including workshops sponsored by association members to teach greater tolerance and sensitivity to racial issues.
- Community organization and church group meetings, seminars, training, and follow-up forums throughout the state devoted to the topics of racial harassment and overall race relations.

Despite this positive momentum, the Committee learned that problems reported in its 1999 report persisted. For instance, students of color reported higher incidences of physical fights and stolen or damaged property than white students. The Committee also learned of severe harassment cases, including those in which school officials failed to respond or took inappropriate remedial action.

The Committee decided to follow up on its 1999 report to (1) inform the public, state officials, and civil rights advocates of the continuing problem of racism in Vermont; (2) identify current efforts to address racial harassment and racism in the state; and (3) identify successful exemplary programs and their components that could be replicated and expanded. To collect needed information, the Committee solicited written responses to questions posed to 25 education agencies, officials, and community activists. Based on the information it received, the Committee released a statement of concern in October 2002 to serve as a starting point for future discussion. It subsequently held three “town meetings” between November 2002 and April 2003, including one using interactive television, to hear directly from the approximately 160 parents, students, educators, public officials, and community leaders in attendance.

Based on this information and supplemental research, the Committee prepared this progress report summarizing written submissions and oral presentations, concluding that:

- State agencies, schools, and community organizations have undertaken exemplary efforts to make the elimination of racial harassment a statewide priority. They held major conferences and teacher training on diversity and anti-racism issues, lobbied the legislature for additional resources and anti-harassment measures, and assigned staff to begin working on the problem.
- A coordinated, statewide plan to address the problem is needed, as well as comprehensive collection and analysis of harassment data.
- Fiscal constraints limit the ability of VDOE and the Vermont Human Rights Commission (VHRC) to develop statewide prevention programs or intervene on behalf of victims and help schools resolve recurring problems.

The Committee is concerned about reports of minority students changing school districts or moving out of the state because of intolerance they encounter in their schools and communities. It hopes that Vermont will strive to be a desirable and welcoming place to live for people of all backgrounds. To help prevent future harassment in schools, reduce general intolerance toward minorities throughout the state, and make Vermont a safe and hospitable place for all, the Committee recommends:

- Clear, enforced standards mandating remedial action or penalties for students who commit harassment and school personnel who do not comply with state law.
- Employees in each school designated and trained to receive and investigate harassment complaints.
- More funding for VDOE and VHRC to accomplish their missions.
- Continued coordination between civil rights groups, educators, and the public.

The Committee believes this progress report will help the public better understand the continuing problem of racial harassment in schools, identify positive steps taken to remedy the problem, and clarify areas requiring additional effort. The Committee also issues this report to acknowledge the hard work of many Vermonters to address racial harassment in schools.

Sincerely,

Eric D. Sakai, *Chairperson*
Vermont Advisory Committee

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I. Introduction

In its February 1999 report, *Racial Harassment in Vermont Public Schools* (the 1999 Report), the Vermont Advisory Committee to the U.S. Commission on Civil Rights (the Committee) concluded that “racial harassment appears pervasive in and around the state’s public schools,” observing that “the elimination of this harassment is not a priority among school administrators, school boards, elected officials, and state agencies charged with civil rights enforcement.”¹

When the 1999 Report was released, there was little comprehensive data with which to assess the extent of racial harassment in Vermont. But since then, several sources have become available indicating how serious the problem is.

1. Partly in response to the 1999 Report, the Vermont General Assembly in 2000 passed an anti-harassment and hazing law, commonly known as Act 120,² requiring schools to submit annual data on harassment and hazing incidents to the Vermont Department of Education (see appendix 1). Thus, we now know that 25 percent of the 2,551 harassment and hazing incidents reported for the 2001–2002 school year were race related.³ Given that Vermont’s non-white students represent 4.17 percent of the total school population in the 2002–2003 school year, the disproportionate number of race-related harassment incidents is truly alarming. Table 1 below shows the percentage of minority students in Vermont schools for the years 1993–2003.
2. Equally disturbing is data derived from the Vermont Department of Health’s 2001 Youth Risk Behavior Survey that indicates:
 - Of 773 Vermont students of color surveyed in grades 8 to 12, 46 percent reported that they had been in a physical fight during 2001 (compared with 28 percent of 8,414 white students).
 - 39 percent of students of color had property stolen or deliberately damaged at school (compared with 26 percent of white students).
 - 14 percent of students of color did not go to school in the 30 days prior to taking the survey because they felt unsafe (compared with 4 percent of white students).⁴
3. Robert Appel, executive director of the Vermont Human Rights Commission, reported that one-third of the public accommodations discrimination charges filed between fiscal years 1994 and 2002 were against schools, and nearly one-third of the 138 cases against schools were based on race.⁵

¹ Vermont Advisory Committee to the U.S. Commission on Civil Rights (USCCR), *Racial Harassment in Vermont Public Schools*, February 1999, p. iii (hereafter cited as *1999 Report*).

² VT. STAT. ANN. tit. 16, § 565 (2003).

³ Vermont Department of Education, Safe and Healthy Schools Program, “Hazing and Harassment in Vermont Schools: 2000–2001 School Year vs. 2001–2002 School Year,” table submitted by Director Doug Dows, town hall meeting, Apr. 9, 2003.

⁴ Kathy Johnson, director of equity initiatives, the Vermont Institutes, attachment to letter to Eric Sakai, chairperson, Vermont Advisory Committee, Oct. 11, 2003. The data cited was extrapolated by the information used to produce the Vermont Department of Health’s Youth Risk Behavior Survey 2001, <www.state.vt.us/health/adap/pubs/2001/yrbs2001.pdf>.

⁵ Robert Appel, executive director, Vermont Human Rights Commission, “Public Accommodations Discrimination Charges Against Schools, FY94 to FY02,” table submitted by Robert Appel, town hall meeting, Apr. 9, 2003.

TABLE 1
Vermont Elementary and Secondary School Ethnic Enrollment, 1993–2003

School Year	White	Minority
93–94	97.50%	2.50%
94–95	97.38	2.62
95–96	96.88	3.12
96–97	97.27	2.73
97–98	97.08	2.92
98–99	97.09	2.91
99–00	96.84	3.16
00–01	96.34	3.66
01–02	95.79	4.21
02–03	95.83	4.17

Source: Vermont Department of Education, “Elementary/Secondary Public School Enrollment (2002–2003 School Year),” Apr. 18, 2003, p. 4.

In the course of gathering information about racial harassment, the Committee received other data that speaks powerfully to problems of racism and racial harassment that are not confined to Vermont’s public schools.

4. According to then-Assistant Attorney General Katherine Hayes, in her annual report to the Vermont legislature on hate crimes investigations, 36 of 92 hate crimes reported through the Vermont Incident-Based Reporting System in 2001 were race related.⁶
5. The Champlain Valley Office of Economic Opportunity recently released a study on fair housing, indicating that 48 percent of African Americans participating in the study experienced some form of discrimination by Vermont real estate agents.⁷
6. The Vermont Center for Justice Research conducted research on disparities in criminal justice processing between minorities and whites. Initial findings indicate that African American males are 1.5 times more likely to be arrested in Vermont than white males.⁸

The emerging statistical evidence of racial harassment in schools is particularly significant, because the testimony published in the Committee’s 1999 Report was dismissed by some educators and legislators as “anecdotal” and unsubstantiated. It is clear to the Committee that racial harassment is a serious problem in Vermont. The hurt done to students of color was amply demonstrated in the heart-wrenching testimony of parents, students, teachers, and others who wrote or spoke to the Committee at its hearings in November 1997 (which formed the basis for its 1999 Report).

Early in 2002 therefore, the Committee began planning a follow-up project to determine what progress has been made and what problems and obstacles remain in addressing a serious social problem that undermines the quality of life and education for all Vermont students, not only those of color.

⁶ Katherine Hayes, former assistant attorney general for civil rights, Office of the Attorney General, “Report to the Vermont Legislature—Hate Crimes,” Feb. 7, 2002, p. 5.

⁷ Champlain Valley Office of Economic Opportunity—Fair Housing Project, “A Real Estate Sales Practices Audit: Fair Housing Law Compliance in Vermont,” April 2003, p. 5, <http://www.cvoeo.org/vti/sales_audit_report4-03.pdf>.

⁸ William Clements, executive director, Vermont Center for Justice Research, “Exploring the Dynamics of Race and Crime Using Vermont NIBRS Data: Executive Summary,” January 2003, p. 2. For the complete study, see <<http://www.state.vt.us/atg/Race%20and%20Crime%20Study.pdf>>. In March 2003, the Vermont Attorney General’s Office announced its plans to take action to address racial bias issues in the law enforcement community. See <<http://www.state.vt.us/atg/press03112003.htm>>.

This report presents a summary of both the progress achieved since the release of the 1999 Report and problems that remain in addressing racial harassment. To provide a context, an overview of the 1999 Report and history of the Committee's 2002 follow-up project are presented below.

The 1999 Report

Following a series of briefings with Vermont Department of Education officials, community groups, and parents between 1996 and 1997, the Committee held community forums in Burlington and Rutland on November 4 and 5, 1997. In order to receive information on racial harassment in schools, the Committee invited parents, students, teachers and administrators, and representatives of the Vermont Department of Education, the Vermont Human Rights Commission, the University of Vermont, and several community organizations. The Committee also received written submissions from several individuals both before and after the community forums. Presenters described public schools as unfriendly and hostile to others of different racial and ethnic backgrounds, a setting wherein racial slurs, epithets, and physical assaults occur and where many students experienced daily fear and feelings of being ostracized from the total school community. The information collected at these forums led the Committee to the conclusion that racial harassment is widespread and pervasive in and around the state's public schools and is a reflection of overall race relations in the state. The 1999 Report incorporated written information from school administrators and education association officials as well as extensive research results on Vermont law and policy related to racial harassment and handling of harassment complaints by the Vermont Human Rights Commission.⁹ The Committee made 17 recommendations that fall into six general categories: planning, publicity, training, enforcement, reporting, and staffing.¹⁰

The Committee is gratified that the report has made a remarkable impact since its release. As noted above, Act 120, passed by the legislature in 2000, incorporated many aspects of the Committee's recommendations. The report was used as a primary reference document for legislators when Act 120 and Bill 113¹¹ were debated. Many advocacy organizations, parents, churches, educators, and business leaders requested the report, using it as reference document for events and discussions on race relations in the state. In response to these requests, approximately 3,000 copies of the report were distributed in Vermont. It is particularly noteworthy that high school and college teachers requested the report and used it as a textbook in courses on race issues. According to Reverend Gary Kowalski of the First Unitarian Universalist Society in Burlington, his congregation's Anti-Racism Action Committee mailed a copy to every public school principal in the state.¹²

As a result of the Burlington Anti-Racism Coalition's review of the 1999 Report, State Representative Mark Larson (Burlington) sponsored a bill in 2003 addressing racial harassment (H.113).¹³ Although it did not make it out of committee, advocates are reworking the bill in hopes of introducing it next session.¹⁴ Bill 113 is discussed more fully in part II of this report.

Development of the 2003 Progress Report

In April 2002, the Advisory Committee embarked upon a follow-up project to review efforts to address racial harassment in schools by the Vermont Department of Education, school personnel, community organizations, and business leaders. As originally conceived, the project aimed to collect

⁹ The process by which the Committee developed its report is described in chapter 1 of the *1999 Report*, pp. 1–4.

¹⁰ The full text of the February 1999 report's conclusions and recommendations appears in appendix 2 of this report.

¹¹ H.R. 113, 2003–2004 Legis. Sess. (Vt. 2003).

¹² Rev. Gary Kowalski, First Unitarian Universalist Society, letter to Marc Pentino, Eastern Regional Office, USCCR, Sept. 17, 2002.

¹³ H.R. 113, 2003–2004 Legis. Sess. (Vt. 2003).

¹⁴ On August 26, 2003, Rep. Mark Larson convened a meeting of three House members, educators, deputy chiefs from the Burlington Police Department, and civil rights advocates to discuss building support for the bill. Robert Appel, director, Vermont Human Rights Commission, e-mail to Marc Pentino, Eastern Regional Office, USCCR, May 23, 2003.

statements from a wide variety of individuals familiar with the issue of racial harassment in Vermont schools and to conduct follow-up discussions as necessary. In developing its plans, the Committee felt it essential to hold several town hall meetings to hear directly from parents, students, teachers, and community leaders, as well as representatives of the Department of Education and other state agencies. Furthermore, members agreed that community forums had to be made more accessible to Vermont's dispersed rural population than were the 1997 gatherings in Burlington and Rutland, the state's two largest cities.

In order to provide a context and starting point for discussing the issues at the town hall meetings, the Committee decided to solicit input from as many persons as possible and release a statement of concern prior to public meetings. The Committee submitted written questions to 25 education agencies and community organizations, and received 21 written responses, including eight from school superintendents.¹⁵ Based on the information it received, the Committee released a statement of concern in October 2002 (see appendix 3). The statement makes the following observations:

- The Committee believes that problems cited in its 1999 Report persist despite significant efforts to find solutions.
- The Committee has learned of severe harassment cases, which may have been exacerbated by school administrators' failure to respond effectively to end harassing conduct.
- The Vermont Department of Education and various education/professional associations instituted laudable programs to both respond to incidents and improve the overall school climate. However, staffing resources and assistance offered to schools may not be enough to address the problem on a systemic, statewide basis.

In order to collect information from a wide variety of sources, particularly parents and other community members, the Advisory Committee held two traditional town meetings (Burlington, November 2002, and Montpelier, April 2003) and a third one (February 2003) using Vermont Interactive Television (VIT) to make it possible for residents in mostly rural areas to participate.¹⁶ VIT allowed persons to participate via live interactive video. At the town meetings, the Committee heard from teachers, administrators, parents, and other community members who wished to inform the Committee of progress and problems in addressing racial harassment in schools. These town meetings differed in some respects from the 1997 community forums, observing the practice of traditional Vermont town meetings of inviting testimony from any community member who wished to speak to the issues at hand. Information presented at these meetings and written submissions form the basis for this progress report.¹⁷

¹⁵ Many of these responses included extensive documentation of programs and activities that address diversity and harassment issues, and some presented data on harassment incidents in individual school districts and for all Vermont schools that submitted reports. Appendix 4 lists persons and organizations that received the Committee's questions.

¹⁶ The six interactive television sites participating were Brattleboro, Colchester, Newport, Randolph Center, Rutland, and St. Albans.

¹⁷ The 2002–03 town meetings differed from the earlier community forums in that oral testimony was not transcribed. Therefore, full transcriptions of that testimony do not appear in this report. However, written statements submitted to the Committee are available upon request from the Commission's Eastern Regional Office.

II. Progress and Problems in Addressing Racial Harassment in Vermont Schools

Taking recommendations of the 1999 Report as points of departure, this section summarizes remedial efforts, both past and current, to address harassment in Vermont schools. It also summarizes the extensive written and oral testimony the Committee received regarding the 1999 recommendations.¹

Update information is organized around six topic headings as in the 1999 Report. Under each heading, recommendations from the 1999 Report are briefly described, and update information and analysis are provided.

1. Planning

Government, advocacy, business, and religious organizations statewide must develop a long-range, coordinated plan to deal with the problem of racial harassment in schools.

- There is no coordinated, statewide plan for dealing with racial harassment in schools. In 1999, a subcommittee of the Vermont Education Coalition was formed to address issues raised in the 1999 Report. This subcommittee, which took the name Vermont Leadership for Equity, Anti-Racism, and Diversity in Schools (VT LEADS), included the leadership of the Vermont Department of Education's Safe Schools Program, the Vermont NEA, the Vermont Human Rights Commission, the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Institutes' Equity Initiatives, and other education organizations from around the state.² VT LEADS developed a five-point plan for addressing equity, anti-racism, and diversity issues that included (1) obligations and responsibilities of school leaders; (2) training for teachers and other school staff; (3) student-led efforts; (4) community outreach and engagement; and (5) public media campaign and Web site.³

VT LEADS' ambitious plan was not carried out fully, due largely to the organization's lack of staff and funding and limited participation of members from outside the Montpelier area. The group met regularly during the 1999–2000 and 2000–2001 school years and sporadically after that. However, the work of VT LEADS led to a number of significant initiatives, including a teacher-training program organized by the Vermont Institutes, the Vermont Department of Education, and other collaborating organizations. The Vermont Institutes' Equity Initiatives Web site and "Schools Striving for Equity, Anti-Racism, and Diversity" recognition program grew out of the planning work of VT LEADS.⁴

¹ While it is beyond the scope of this report to cite every piece of relevant information that was presented in written or oral testimony, the Committee believes the following summary accurately represents the status of efforts to address racial harassment in Vermont schools.

² Other participants included Governor Dean's office, Vermont Center for the Book, and the Community College of Vermont. Angelo Dorta, president, Vermont NEA, letter to Marc Pentino, Eastern Regional Office, USSCR, and Eric Sakai, chairperson, Vermont Advisory Committee, Nov. 7, 2002.

³ Kathy A. Johnson, director of equity initiatives, the Vermont Institutes, letter to Eric Sakai, chairperson, Vermont Advisory Committee, Oct. 11, 2002; Robert Appel, director, Vermont Human Rights Commission, letter to Eric Sakai, Apr. 9, 2003.

⁴ See <<http://www.vermontinstitutes.org/equity/>>.

2. Publicity

State officials, civil rights and civic organizations, business leaders, and concerned citizens must join forces to raise public awareness of the problem of racial harassment and its debilitating effects on minority and nonminority students alike.

- Although there have not been coordinated, statewide efforts to publicize the problem of racial harassment, many local initiatives have been well publicized and have received substantial media coverage. For example, a march in Montpelier on January 15, 2003, commemorated Martin Luther King Jr.'s birthday and brought more than 100 people (including approximately 50 students and 30 general assembly members) to the Vermont State House to hear public comments in support of anti-harassment legislation (House Bill 113). A very well-organized program developed by the Burlington Anti-Racism Coalition attracted participation by nearly 300 Burlington residents in 20 study circles that formulated plans to address racial harassment and related problems, such as racial profiling and housing discrimination.
- Three major conferences on diversity and anti-racism issues have been staged since the release of the 1999 Report. On November 12, 2001, "Human Rights: How the Changing Face of the World Affects Vermont," sponsored by the Burlington Peace and Justice Center and its Racial Justice and Equity Project, drew approximately 300 participants to presentations and workshops on racism and related topics. A conference on "Embracing a World of Diversity," held in Burlington on April 9 and 10, 2002, focused on the state's diverse and growing immigrant population and the problems it faces in making a home in Vermont. On May 14, 2003, "Closing the Gap: Fulfilling the Promise of Student Success through Equity, Diversity, and Character Education" attracted over 150 educators from around the state to sessions dealing with race, class, and gender issues in K–12 education. Of particular note was a May 13 pre-conference training, "Investigating Incidents of Harassment," that brought representatives of 30 school districts to one of the few such trainings offered to date in Vermont. The training was coordinated by the Vermont Institute's Equity Initiatives and Region 1 of the National Association for Multicultural Education. The Vermont Department of Education provided financial support for the conference and training, with additional sponsorship or participation by 16 Vermont organizations.⁵

3. Training

The Vermont Department of Education should allocate resources to ensure that all teachers receive training to prevent harassment incidents, respond effectively when they occur, and select curricular materials and instructional activities that are free of racial bias and stereotypes.

- Some schools and school districts have implemented promising programs for raising awareness of diversity issues and involving students in addressing harassment in schools, but most school administrators, teachers, and staff do not have adequate training to identify and respond to racial harassment incidents. Organizations such as the Vermont Institutes and the Brattleboro ALANA Community Organization have made significant efforts to monitor school responses to racial harassment and to disseminate best practices in fostering respect for diversity. The Vermont Department of Education has collaborated with representatives of educational associations, schools, and community organizations to offer teacher training in diversity issues and, more recently, in responding to harassment incidents. The department, in collaboration with the Vermont Institutes and VT LEADS, initiated a training program in the summer of 2000, under the auspices of the department's BEST program (Building Effective Support for Teaching Students with Behavioral Challenges). The curriculum employed

⁵ Kathy A. Johnson, director of equity initiatives, the Vermont Institutes, e-mail to Marc Pentino, Eastern Regional Office, USCCR, in response to affected agency review, Sept. 15, 2003.

was “A World of Difference,” developed by the Anti-Defamation League,⁶ and the 22 educators initially trained to be trainers brought the program to schools, colleges, and conferences. Despite the lack of central coordination of these trainings, 604 educators participated between 2000 and 2002. During summer 2003, 59 additional educators received training to prepare them to use the “A World of Difference” curriculum and Student Peer Training Program in their own and other Vermont schools. Thirty-three of these educators participated in a 45-hour Train-the-Trainers Institute, bringing the number of trainers to 55.⁷

- It is extremely important to distinguish between training programs that focus on diversity issues, such as the BEST Summer Institute program described above, and training for teachers, administrators, and school staff that addresses effective responses to harassment incidents. The latter is not widely available to educators in Vermont. While diversity training is important in its own right and as a context for dealing with harassment incidents, the lack of a coordinated, statewide training program for responding to racial harassment incidents in schools is a serious deficiency that must be addressed. Former Department of Education Commissioner Raymond McNulty acknowledged this deficiency in his response to the Committee’s inquiry: “Through training programs, we are increasing the capacity of schools to respond appropriately to harassment without our assistance, *but the pace of our efforts to build capacity within the system is insufficient to bring about the magnitude of change needed* [emphasis added].”⁸

The Vermont Department of Education should also provide teachers with training in racism. Current diversity training programs see racism and other “isms” primarily as a result of individual bias and individual actions. Their premise is that with awareness and appreciation of individual differences harmony can be advanced. Training in racism, on the other hand, considers acts of prejudice to be derived from societal, cultural, and institutional beliefs that the dominant white race has used to subordinate other races in America. Racism training aims at exposing the social, cultural, and institutional beliefs that foster racism to understand how power by the dominant race is used to subordinate others.

4. Enforcement

The State Board of Education should be given statutory authority to monitor and enforce the compliance of school districts with harassment policy and reporting requirements.

- Under the current state public accommodations statute, schools are included in the definition of “places of public accommodation.”⁹ Vermont law provides that a person aggrieved by discrimination in such places may file a charge of discrimination with the state Human Rights Commission (which has jurisdiction over racial discrimination complaints against schools) or bring an action for injunctive relief and compensatory and punitive damages, and other appropriate relief in superior court.¹⁰ If after an investigation, the Commission believes there is

⁶ For pre-kindergarten through 12th grade school communities, the Anti-Defamation League’s World of Difference Institute provides teachers with lessons to help students explore prejudice and bigotry, examine diverse viewpoints, assume leadership roles, and improve critical thinking skills. See <<http://www.adl.org/awod/classroom.asp>>.

⁷ The theme of the 2003 conference was “Dealing with Conflict in Our Schools.” The 2004 conference theme will be “Bullying and Harassment.” Kathy A. Johnson, director of equity initiatives, the Vermont Institutes, e-mail to Marc Pentino, Eastern Regional Office, USCCR, in response to affected agency review, Sept. 15, 2003.

⁸ Raymond McNulty, commissioner, Vermont Department of Education, letter to Eric Sakai, chairperson, Vermont Advisory Committee, enclosure #1, Oct. 29, 2002.

⁹ VT. STAT. ANN. tit. 9, § 4501(1) (2003).

¹⁰ VT. STAT. ANN. tit. 9, §§ 4502, 4552(b) (2003).

unlawful discrimination, it has the authority to seek a court injunction, compensatory and punitive damages, fines up to \$10,000 per violation, and attorneys' fees.¹¹

As mentioned in part I, under Act 120, schools boards must develop administrative means to address illegal harassment in schools.¹² School boards must prohibit unlawful harassment, provide the definition of harassment in Vermont law, and present the consequences of and remedial action for violations.¹³ Boards must also establish procedures for harassment complaints.¹⁴ Students do not have a private right of action under the statute.

Legislators and representatives of the Vermont Department of Education have struggled with proposed changes to liability provisions in existing state law for instances of harassment. In the 2003–2004 legislative session, Representative Mark Larson of Burlington introduced H.113, a bill addressing racial harassment in schools (see appendix 7).¹⁵ The bill clarified the definition of racial harassment in schools and other public accommodations, and called for each school board to appoint civil rights officers.¹⁶

More importantly, the bill would have allowed victims of racial harassment in a school to seek injunctive relief and compensatory and punitive damages against the perpetrator of the harassment *and hold the school and school district jointly and severally liable* under Title 16 of Vermont's education law if it did not take prompt and appropriate remedial action to stop the conduct.¹⁷

In testimony to the House Education Committee, representatives of the Vermont Department of Education stated that the bill had “too much stick and not enough carrot”—that is, more emphasis on a punitive response than prevention.¹⁸ The House Education Committee subsequently struck the provision in the bill allowing victims to seek compensatory and punitive damages from perpetrators and the joint and severally liability portion. However, the Education Committee left untouched a provision requiring schools to “take prompt and appropriate remedial action reasonably calculated to stop harassment.” This obligation would arise when a school receives actual notice of an alleged incident of harassment (see appendix 6 for the revised bill).¹⁹

The bill was presented on the House floor for a second reading with this amendment and referred to the House Judiciary Committee to address standards for liability, an area more within that committee's jurisdiction.²⁰ It should be noted that provisions allowing victims to

¹¹ VT. STAT. ANN. tit. 9, § 4553(a)(6)(a–d) (2003).

¹² VT. STAT. ANN. tit. 16, § 565 (2003).

¹³ *Ibid.*

¹⁴ *Ibid.*, § 565(1)(b)(c).

¹⁵ H.R. 113, 2003–2004 Legis. Sess. (Vt. 2003).

¹⁶ *Ibid.*

¹⁷ *Ibid.*, § 2.

¹⁸ Robert Appel, director, Vermont Human Rights Commission, letter to Eric Sakai, chairperson, Vermont Advisory Committee, Apr. 9, 2003, p. 4, reporting testimony of Doug Dows, safe schools director, and Charles Johnson, coordinator, Vermont Department of Education.

¹⁹ For federal Title IX claims, the Supreme Court announced a “deliberate indifference” standard for student-on-student sexual harassment. In such cases, a private right of action can be brought only if the school was deliberately indifferent to sexual harassment, and had actual knowledge, and if the harassment was so severe, pervasive, and objectively offensive that it can be said to deprive the victim of educational opportunities or activities. *See Davis v. Monroe*, 526 U.S. 629, 652–653 (1999); Robert Appel, director, Vermont Human Rights Commission, e-mail to Marc Pentino, Eastern Regional Office, USCCR, Sept. 15, 2003.

²⁰ David Larsen, commissioner of education, Vermont Department of Education, letter to Marc Pentino, Eastern Regional Office, USCCR, Sept. 15, 2003, p. 2.

seek compensatory relief that were struck from Bill 113 were similar to provisions originally proposed in what came to be Act 120. However, as in Bill 113 this provision did not survive.²¹

- Racial harassment continues to be a serious problem in Vermont schools, according to available data and testimony of school officials, community representatives, parents, and students. Over the past four years, and particularly in the course of hearing testimony during its 2002–2003 town meetings, the Committee learned of several instances in which school officials evidently did not respond appropriately to racial harassment complaints. One case was litigated by the Vermont Human Rights Commission on behalf of harassment victim Peter Bessette. When Bessette, a high school student at Missisquoi Valley Union High School in Swanton, reported that he was being harassed by one of his peers and feared for his safety, a school administrator responded that he should “build himself up”—that is, defend himself physically.²² Bessette was later harassed again and suspended for hitting the perpetrator with a crutch. The incident highlighted the need for harassment and diversity training at the high school.²³ The school subsequently held harassment training and used the “study circles” approach with staff and students.²⁴ It plans to continue similar staff development activities this school year.²⁵
- According to a complaint filed in Washington County Superior Court in September 2001, a female student at Harwood Union High School was “subjected to an educational environment in school which was pervasively intimidating, hostile and offensive by reason of unwelcome racially based, ethnically based and gender based conduct towards her as a student and other students similarly situated.”²⁶ The complaint further asserts that, pursuant to state law, school officials “had an affirmative duty to promulgate, publish, implement and enforce a procedure for investigating reports of violations and complaints relative to the abusive and harassing behavior . . . and that [they] failed to comply with this duty.”²⁷ The complaint was ultimately dismissed on September 30, 2003.²⁸

²¹ VT. STAT. ANN. tit. 16, § 165 (2001).

²² Amended complaint for temporary restraining order, Vermont Human Rights Commission v. Missisquoi Valley Union High Board of School Directors, p. 2; See also Oral testimony of John Edwards to the Advisory Committee, Colchester, Feb. 14, 2003; Brent Hallenbeck, “Rights Panel Seeks Student’s Reinstatement,” *Burlington Free Press*, May 16, 2002, p. 1, and “Judge: Student Can Go to Prom,” May 17, 2002, p. 1.

²³ Dr. John J. McCarthy, superintendent of schools, Franklin Northwest Supervisory Union, letter to Marc Pentino, Eastern Regional Office, USCCR, Sept. 22, 2003, in response to affected agency review.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Amended complaint, Celeste Washington, Martha Daley, and Arthur Washington v. Robert Pierce, principal of Harwood Union High School, Board of Education of the Harwood Union School District and the Harwood Union School District, No. 492-9-01-WNCV (Washington County Superior Court), Sept. 14, 2001, p. 2.

²⁷ *Ibid.*, p. 4.

²⁸ In dismissing the case, the Superior Court applied the U.S. Supreme Court’s *Davis v. Monroe* standard of “deliberate indifference” in sexual harassment cases to racial harassment. As noted in footnote 19 above, the standard requires schools to be deliberately indifferent to sexual harassment and have actual knowledge of incidents. The harassment must be so severe, pervasive, and objectively offensive that it deprives the victim of educational opportunities or activities. The Superior Court found that although the student sufficiently alleged that the harassment was “severe, pervasive, and objectively offense” under *Davis*, she did not produce evidence of deliberate indifference to instances of student misconduct. It should be noted that the Superior Court recognized that the Vermont Supreme Court has not addressed whether a claimed violation of the public accommodations act may be based on student-on-student harassment in schools. However, it found at least one Vermont Superior Court case had applied the *Davis* standard to public accommodations claims based on student-on-student harassment. The court also dismissed plaintiff’s second claim alleging negligence. Opinion and Order on Defendant’s Motion for Summary Judgment, Celeste Washington, Martha Daley, and Arthur Washington v. Robert Pierce, principal of Harwood Union High School, Board of Education of the Harwood Union School District and the Harwood Union School District, No. 492-9-01-WNCV (Washington County Superior Court), Sept. 30, 2003, pp. 4–5.

(It should be noted that according to newspaper accounts, in June 1997 Mary Williams, the school's principal, and middle school principal Marta Cambra sent a letter to parents and guardians noting that discrimination, intolerance, harassment, and racism were "appropriate labels for behaviors that continue to be too common among Harwood students.")²⁹

With the assistance of the Vermont Corrections Department, Harwood subsequently developed a school justice project to train 26 students and adults to use family group conferencing skills and peer mediation. Harwood also offered training to more than 30 students and adults in the use of study circle techniques developed by the Study Circles Foundation. Lastly, school justice project members participated in student exchange activities at Harwood and Twinfield Union High Schools. Harwood Union High School plans to continue the school justice project in the 2003–2004 school year.

- At the Committee's first town meeting in Burlington, several parents reported that their school officials or school boards did not respond to complaints of racial harassment directed at their children. One parent noted that her school board responded to her complaint by observing that a response was unnecessary, since her children would soon be leaving the school system.³⁰ The Committee recognizes that such allegations of school inaction in the face of harassment complaints—as documented in the present report and in its February 1999 report—are not legal testimony subject to cross-examination or independent verification. The Committee further recognizes that, in many cases, school officials are not at liberty to reveal detailed information about harassment complaints or their disposition, due to confidentiality strictures.³¹ At the same time, the dozens of racial harassment incidents painfully recounted to the Committee over the past four years by aggrieved parents and students simply cannot be dismissed as "anecdotal" or not credible for lack of responses from school officials.

5. Reporting

*The commissioner of the Vermont Department of Education should require all schools to report annually on racial harassment incidents and their resolution, and he or she should report annually to the governor and legislature on systemwide compliance with the 1993 Anti-Harassment in Education Act.*³²

- Under Vermont law, schools must develop and implement a comprehensive plan to meet school quality standards, including plans to ensure a safe, orderly, and civil environment that is free from harassment.³³ School boards are also required to report annually to their communities on how well individual schools meet this standard.
- The Vermont Department of Education does not yet have comprehensive, reliable data on racial harassment incidents. The department, which monitors school board reporting to their community, stated that 93.4 percent of schools reported that they were in compliance with the requirement in 2001. However, the department also noted that, since it does not collect annual school reports, the data cannot be confirmed. Furthermore, the same statute requires school boards to adopt and enforce anti-harassment and hazing policies, but it appears that the department does not track the number of schools that have adopted anti-harassment and hazing policies and only confirms the existence and enforcement of such a school policy when

²⁹ Sky Barsch, "Former Harwood Student Suing School," *Barre Montpelier Times Argus*, July 29, 2003.

³⁰ Oral testimony of Martina Green to the Advisory Committee, Burlington, Nov. 20, 2002.

³¹ State law exempts student records from public inspection except under provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380). VT. STAT. ANN. tit. 1, § 317(e)(11).

³² VT. STAT. ANN. tit. 16, § 565 (1997).

³³ VT. STAT. ANN. tit. 16, § 165 (2003).

it receives a parental complaint regarding the failure of a school to respond adequately to a harassment situation.³⁴

- In response to requirements of Act 120, the Vermont Department of Education began collecting data on hazing and harassment incidents. The data categorizes incidents by the type of incident (student-on-student or staff-on-student harassment, hazing, and bullying) and by the ostensible motivation (creed, disability, gender, national origin, race, sexual orientation, other). In the first year of reporting, some definitional confusion around the categories of harassment and hazing and misunderstanding about which schools were subject to the reporting requirement produced data that was both unreliable and unverified (47 percent of incidents reported in the 2000–2001 school year were classified as “other”). For the 2001–2002 school year, more schools reported (304 versus 217 in the previous year), and incidents were more carefully categorized. The resulting data, which indicates that 25 percent of 2,551 reported incidents of harassment, hazing, and bullying were race related, suggests the magnitude of the specific problem of racial harassment to school officials, who sometimes dismiss incidents as “teasing,” according to reports by parents of children of color.
- In its response to the Committee’s 2002 request for information for this project, the Vermont Department of Education noted that “current legislation requiring hazing/harassment data collection should be improved to clarify what data should be collected.”³⁵ In its 1999 Report, the Committee already made two recommendations related to reporting requirements: (1) that the department should develop a standard incident report form that allows parents and victims “to communicate formally instances of racial harassment to school personnel, record their understanding of the incident (including responses by school staff), and suggest ways to ameliorate the situation”; and (2) that school boards should be required to report annually on “the number of minority students, the number of racial harassment incidents in each school, the type of disciplinary action imposed upon the perpetrators, and the victim’s satisfaction with the resolution process.”³⁶ In its 1999 Report, the Committee recommended that the department be given enforcement oversight authority to improve data collection and reporting. With the exception of victim’s satisfaction with the resolution process, the department collects this data. In its response to this report, the department noted that an “understanding of the victim’s satisfaction would be difficult to obtain given state and federal laws that make the outcome of student disciplinary matters confidential.”³⁷

6. Staffing

The commissioner of the Vermont Department of Education should create at least one full-time position within the department solely to address racial harassment in schools. The Vermont Human Rights Commission should request funding from the Vermont legislature to increase staffing in order to effect more timely resolution of complaints of racial harassment in schools.

- In line with the Committee’s recommendation, the Vermont Department of Education created the position of safe schools coordinator in 2000 and hired one person to fill that position to respond to harassment incidents and to develop statewide prevention programs. However, one staff member cannot accomplish these duties. The staff person intervenes in harassment

³⁴ Raymond McNulty, commissioner, Vermont Department of Education, letter to Eric Sakai, chairperson, Vermont Advisory Committee, enclosure #1, Oct. 29, 2002.

³⁵ Ibid.

³⁶ Vermont Advisory Committee to the U.S. Commission on Civil Rights, *Racial Harassment in Vermont Public Schools*, February 1999, pp. 66–67.

³⁷ David Larsen, commissioner of education, Vermont Department of Education, letter to Marc Pentino, Eastern Regional Office, USCCR, Sept. 15, 2003, p. 2.

incidents reported to the department, but there is widespread recognition and dismay—even from educators—that one person, however skilled, cannot possibly respond to all racial harassment incidents, much less coordinate statewide programs and activities aimed at preventing harassment.³⁸ The department itself acknowledged that “it is difficult to provide prevention services when the demand for intervention services exceeds available resources. That is the case with hazing and harassment.”³⁹

- To obtain more timely resolution of complaints, investigators with the Vermont Human Rights Commission maintain a “reasonable” caseload that allows them to complete most investigations within six to 12 months. Because of the ongoing relationship and contact between parties involved in school-based cases, the commission gives priority to harassment complaints and makes referrals to professional mediators when possible. Director Appel acknowledges that increased staff would shorten time frames for investigations, but he doubts that increases are possible, given current fiscal constraints.⁴⁰
- House Bill 113 introduced in the 2003–2004 session called for the creation of the position of school civil rights officer in each school as a means of mitigating the shortage of staff that adversely affects the completion time of commission investigations. Under the bill, two officers would be appointed and trained to investigate harassment complaints. Unfortunately, the House Education Committee struck that provision from the draft legislation.

³⁸ In his response to the Committee’s request for information, Jeffrey Francis, executive director of the Vermont Superintendents Association, also stated that the work of schools to prevent harassment and racism could be better supported if more resources were added. Jeffrey Francis, letter to Eric Sakai, chairperson, Vermont Advisory Committee, Oct. 17, 2002.

³⁹ Raymond McNulty, commissioner, Vermont Department of Education, letter to Eric Sakai, chairperson, Vermont Advisory Committee, enclosure #1, Oct. 29, 2002.

⁴⁰ Robert Appel, director, Vermont Human Rights Commission, letter to Eric Sakai, Vermont Advisory Committee, Apr. 9, 2003, p. 3.

III. Summary

Vermont has not escaped the racial prejudice that has afflicted our nation for centuries. In its 1999 report, *Racial Harassment in Vermont Public Schools*, the Committee identified racial harassment as a pervasive problem that harmed minority as well as white children in the state's schools. In some cases, the problem was exacerbated by administrators not responding appropriately to incidents because of the lack of training and clear standards for schools to follow.

The Committee hoped that the report would move legislators, educators, and business and religious leaders to join forces to improve the safety and educational welfare of all Vermont's children. This would require making the elimination of racial harassment a statewide priority by state leaders, who could lend their coordinated efforts and leadership to the problem. To accomplish this goal, the Committee recommended that the state legislature give greater investigative and enforcement authority to the Vermont Department of Education (VDOE) and the Vermont Human Rights Commission (VHRC), two agencies best suited to spearhead the effort. By allocating sufficient funds and hiring additional staff, the agencies could work directly with local school boards, educators, and parents to handle complaints, develop appropriate bias-free curricula, and improve the overall school climate.

In the three years since the report's release, the Committee monitored many exemplary efforts undertaken by state agencies, schools, and community action organizations to accomplish these goals. By holding its town meetings and soliciting written responses to its questions from these entities, the Committee learned of the considerable progress Vermont has made in addressing the problem of racial harassment in schools and in the larger community, including (1) enactment of a new anti-harassment and hazing law (Act 120); (2) efforts by organizations, such as VT LEADS, to bring together education leaders to coordinate their efforts to eliminate racial harassment; (3) major conferences and training programs on diversity and anti-racism issues; and (4) reallocation of staff and agency priorities by VDOE and VHRC to better address prejudice in the schools. However, the Committee identifies four remaining problem areas:

1. Racial and other forms of harassment continue to occur, as reported by VHRC, community groups, and victims. A significant number of incidents are race related, with some accompanied by physical altercations or serious threats of violence. As the Committee concluded in 1999, some administrators are not responding effectively to stop the incidents from reoccurring.
2. There is no coordinated plan to address the problem among various education entities, state agencies, and advocacy organizations. Training of teachers, administrators, and school staff to develop a common understanding of appropriate responses to incidents has begun, but this needs to be instituted in a systemic, mandatory way. Appointing and training civil rights officers in each school to receive and investigate complaints, as proposed in Vermont House of Representatives Bill 113, would help in this regard.
3. Vermont lacks a comprehensive, reliable way to collect and analyze data on harassment incidents. Although VDOE began collecting data, it needs to provide more guidance to schools to guarantee the accuracy of the information. VDOE should give serious consideration to developing a clear process for reporting, recording, and processing incidents. It needs direct oversight responsibility to ensure that school systems collect data and report findings to the public. A standard incident report form should be developed for parents to formally communicate incidents of harassment and bullying to school officials.

4. VDOE's and VHRC's limited resources and fiscal constraints make it difficult to develop statewide harassment prevention programs and investigate all complaints. Both agencies need more staff to intervene when incidents occur and facilitate resolution of problems in schools. Given this reality, VDOE has an obligation to make best use of resources, reorder priorities, and develop effective solutions to the problem. Both agencies should urge the legislature to increase funding so that necessary resources can be provided and allocated specifically to addressing harassment in Vermont public schools.

The Committee commends the efforts that Vermont has made since 1999 to address the problem of racial harassment in its schools. There is a genuine commitment among many individuals and organizations in the state to ensure that schools are safe learning environments for all students. Indeed, one of the challenges that remains for Vermont is to identify best practices that schools and communities have developed for dealing with the problem and implement them on a statewide basis.

In recent years, there has been much discussion in Vermont of the need to be competitive in the global marketplace. Clearly, Vermont will be at a serious economic disadvantage if the stigma of bigotry deprives the state of a competent, diverse workforce and if our schools produce graduates who do not understand and respect differences among all people. Beyond this pragmatic consideration, the very high value that Vermonters place on strong communities is at risk if we do not embrace the growing diversity of those communities. We have taken important steps in that direction; the real work lies ahead.

APPENDIX 1

Act 120 (Vermont Anti-Harassment and Hazing Law of 2000, VT. STAT. ANN. tit. 16 § 565)

§ 565. Harassment and hazing prevention policies

(a) It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(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:

- (A) A statement prohibiting harassment of a student.
- (B) The definition of harassment pursuant to subdivision 11(a)(26) of this title.
- (C) Consequences and appropriate remedial action for staff or students who commit harassment.
- (D) A procedure that directs students and staff how to report violations and file complaints.
- (E) A procedure for investigating reports of violations and complaints.
- (F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to harassment.

(2) The hazing prevention policy shall include:

- (A) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited.
- (B) A procedure that directs students and staff how to report violations and file complaints.
- (C) A procedure for investigating reports of violations and complaints.
- (D) Circumstances under which hazing may be reported to a law enforcement agency.
- (E) Appropriate penalties or sanctions, or both, for organizations which or individuals who engage in hazing, and revocation or suspension of an organization's permission to operate or exist within the institution's purview, if that organization knowingly permits, authorizes, or condones hazing.
- (F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to hazing.

(c) Each school district shall establish rules setting forth procedures for dealing with harassment and hazing of students which include:

- (1) Annual designation of two or more people within the institution to receive complaints and a procedure for publicizing those people's availability.
- (2) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(3) A statement that acts of retaliation for reporting of harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9.

(d) Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this section to students, custodial parents or guardians of students, and staff members. Notice to students shall be in age-appropriate language and should include examples of harassment and hazing. At a minimum, this notice shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students about the substance of the policy and procedures in order to help prevent harassment, and hazing.

(e) The commissioner shall develop and, from time to time, update model harassment and hazing prevention policies.

APPENDIX 2

Conclusions and Recommendations from the Vermont Advisory Committee's 1999 Report, *Racial Harassment in Vermont Public Schools*

At its November 1997 community forum, the Vermont Advisory Committee received information from parents, students, State government officials, and community organization representatives concerning incidents of racial harassment in both elementary and secondary public schools. The testimony gathered at the forum leads the Committee to believe that racial harassment is widespread and pervasive in and around the State's public schools and is a reflection of overall race relations in the State. The Committee is deeply concerned for the safety and welfare of all students, particularly minorities, who at times must confront these acts without assistance from school officials and State agencies. Panelists described the public schools as unfriendly and hostile to the needs of minority students, a setting wherein racial slurs, epithets, and physical assaults occur. Panelists also described the general ostracism of minority students from the total school community. As a result, minority students experience fear in attending schools and are reluctant to participate in school activities, adversely affecting their academic performance.

According to many panelists, a climate of insensitivity exists in Vermont communities whereby residents exhibit general intolerance to others of different racial and ethnic backgrounds. This reality has served to inhibit the entire State's ability to develop a level of sensitivity to civil rights issues unrelated to racial harassment. The Committee fears that the detrimental effects of racism will be evidenced in today's students long after completion of a particular school year and graduation from the public school system. As students leave the school system, many maintain their racial stereotypes and may perpetuate harmful attitudes towards minorities and feelings of animosity to others in the community. In addition, students who have experienced racial harassment will likely exhibit negative self-esteem, lowered self-confidence, and a sense of estrangement. These feelings may

persist into adulthood and contribute to racial tensions in other contexts.

As schools play a major role in making positive changes for a community, it is vital that an emphasis be placed on ensuring that attitudes of racial intolerance are corrected at an early age. Messages of tolerance and sensitivity to minority concerns, transmitted to students and staff, can positively influence Vermont residents and can play a role in changing a culture of intolerance that currently exists. The following conclusions and recommendations are offered by the Advisory Committee to summarize the report's major findings and to provide proactive suggestions for Vermont leaders and educators.

Conclusion 1 ***Racism in Vermont Communities***

According to many panelists, acts of harassment, bigotry, and violence have been directed at members of all racial and ethnic minority groups and frequently occur in the public schools. The Committee believes that these acts are merely a symptom of racism that is embedded within the larger Vermont community. As in many other States, racism has permeated into the very fabric of Vermont life, undermining residents' ability to contribute to the productivity and stability of the State. It has also added to the statewide difficulty to launch and sustain vigorous civil rights protection for minority residents (chapter 1, pp. 1–4, chapter 2, pp. 6–8, 11–13, 15–19, 20–30, 31–33, 48–50).

Recommendation 1.1

State officials, civil rights and civic organizations, religious organizations, and business leaders must alert Vermont citizens that racism continues to exist in the State, adversely affecting both minority and nonminority citizens in schools, the workplace, and in everyday interaction. State and community leaders must actively help develop a consensus that racism is no longer acceptable and must be eliminated. Recognizing that this goal takes a sustained effort

over a long period of time, government, advocacy, business, and religious organizations must develop a long-range, coordinated plan to deal with the problem statewide.

Conclusion 2 ***Elimination of Racial Harassment as a Statewide Priority***

As the numbers of minority students increase in the State, information gathered at the forum and followup research suggest there will be a concurrent rise in the number of racial harassment incidents and that these incidents will not be adequately dealt with by school administrators or State agencies. Although there have been efforts by the State legislature to address this issue, it has not become a priority among school administrators, school boards, elected officials, and State agencies charged with civil rights enforcement. In some instances, administrators and government leaders have denied the existence of the problem and do not acknowledge the need for improvements in overall race relations within the State. The business community and private groups (who possess the knowledge and expertise in dealing with harassment) have not elevated the debate to the State level to direct public attention and promote meaningful solutions. Although the Committee repeatedly offered school administrators and government leaders an opportunity to present their viewpoints on the issue, only two administrators attended the forum, while one organization (and one government official) submitted written materials to the Committee subsequent to the event. Their failure to respond, the Committee believes, is a reflection of general indifference and denial or avoidance of the problem of racial harassment (chapter 2, pp. 5, 8–11, 13–14, 17, 27–29, 44–47).

Recommendation 2.1

As Vermont's minority population increases, State officials, civil rights and civic organizations, and business leaders must join forces to enhance community awareness that racial harassment in public schools is a statewide problem adversely affecting minority and nonminority students alike. The problem deserves immediate attention by all segments of the Vermont business, education, and religious communities. The Governor should provide direct and coordinated organization and leadership to raise the collective consciousness to the problem of racial har-

assment. It is only through coordination and broad community involvement that improvements will be made. Business and government agencies should pool their resources to develop appropriate educational programs and teaching plans, promote community outreach events, and issue public service announcements. Organizations that should lend their support include economic development agencies, the business roundtable, civic clubs, religious organizations, local chambers of commerce, and Vermont teachers/superintendents unions. These organizations, in coordination with State officials, should strive to promote a deeper understanding in every sector of the State of the debilitating effects of racism upon minority and majority students, school staff, and the surrounding community.

Conclusion 3 ***The Need for School-Based Responses to Incidents of Racial Harassment***

According to some panelists, even when alleged instances of racial harassment occur in schools, it has been reported that administrators are reluctant to accept them as racial incidents and may deny the existence of racial bias in the public schools. Panelists reported that this problem may be due to administrators' lack of training and ability to recognize and effectively respond to racism in the schools. Training that has been provided to teachers and administrators may not be successful in raising the consciousness or sensitivity of persons in the school system to problems of racial bias. Although administrators are dedicated to their profession, many purportedly exhibit an inability to deal with persons of other races, lacking an understanding on how to instruct students on ways to cope with cultural differences. As a result, administrators may fail to take appropriate steps to discipline the perpetrators of racial harassment and lack skills to remedy the problem (chapter 2, pp. 5–6, 8–11, 13–14, 27–29, 44–47, 51).

Recommendation 3.1

State lawmakers, local school boards, and administrators should support diversity in the public schools and actively strive to eliminate racial and other forms of harassment. More specifically, the State Board of Education and the Commissioner of the Vermont Department of Education should allocate sufficient resources to provide preservice and in-service training for all

teachers, thus underscoring the importance of the prevention of racial harassment. The goal of all training should be to develop a class of teachers who anticipate potential situations wherein harassment may occur and can act swiftly to remedy the problem. Training should include techniques to identify and prevent harassment in school settings and proper instruction on how to immediately resolve incidents when they are witnessed by staff or called to their attention. All training should stress the importance of school-based resolution of the problems so that referral of the incident to State agencies is viewed as a last resort.

Conclusion 4

The Ineffectiveness of Existing State Law to Address Racial Harassment and Compliance by School Boards

Existing State law is deficient in addressing the problem of racial harassment on a systemwide basis. Vermont's Anti-Harassment in Education law does not grant the Vermont Department of Education direct oversight responsibility for supervisory unions and local school boards with regard to racial harassment issues. In addition, the law does not provide any penalty provisions for the department to impose sanctions in the event particular boards fail to develop or implement antiharassment policies and procedures. As found by the U.S. Department of Education's Office for Civil Rights, various school boards have not adopted provisions of the State model harassment policy and, in some cases, even neglected to adopt any policy. At present, schools report on the existence of racial harassment on a voluntary basis to their local school boards. Because this information is potentially damaging to the school, administrators may be reluctant to assess voluntarily their school's compliance with the objectives of the statute, disciplinary actions, or the existence of racial tensions (chapter 1, p. 3, chapter 3, pp. 54–55).

Recommendation 4.1

The legislature should amend the Anti-Harassment in Education law to give the State Board of Education and the commissioner administrative and enforcement oversight authority over race-related issues in school districts so that stronger enforcement mechanisms and appropriate sanctions can be developed. This will enable the Department of Education to determine whether school boards have failed to de-

velop and implement antiharassment policies and procedures that conform to the State model. Directing the commissioner to impose stricter standards for oversight should improve better data collection and reporting and compliance with the Anti-Harassment in Education law by individual schools.

Recommendation 4.2

The State Board of Education should make the elimination of harassment against any student a major agenda item of the State school system. The State Board should require disciplinary action for students who harass their peers. The disciplinary action should be commensurate to the severity of the offense and students should be aware that repeat offenses will result in greater consequences. The State board should lead the systemwide effort to instill in teachers a greater appreciation of minority student concerns. The State board should actively support a comprehensive training program on the State policy, the State Anti-Harassment in Education law, and proper disciplinary options that could stop racial harassment from occurring. The State board should ensure that this training program has taken place and report annually to the Governor and legislature on training programs implemented in State schools.

Recommendation 4.3

Schools should report their compliance with the Anti-Harassment in Education law in their annual school report submitted to the Vermont Department of Education. The commissioner should require all school boards to compile and report the number of minority students, the number of racial harassment incidents in each school, the type of disciplinary actions imposed upon the perpetrators, and the victim's satisfaction with the resolution process. This information will enable department staff to assess progress by keeping a record of:

1. The total number of complaints registered with schools, school boards, supervisory unions and/or the Human Rights Commission.
2. Whether perpetrators receive appropriate disciplinary action for acts of harassment.
3. Whether supervisory unions, school boards, school districts, and individual schools em-

ploy effective measures to prevent racial harassment incidents.

4. Whether schools experiencing a high number of incidents have endeavored to improve the overall school climate.
5. Individual outcomes of cases. Every effort should be made to ensure that information collected will remain confidential.

Recommendation 4.4

The Vermont Department of Education should consider developing an incident report form for distribution and use in schools. This form will allow parents and victims to communicate formally instances of racial harassment to school personnel, record their understanding of the incident (including responses by school staff), and suggest ways to ameliorate the situation. Once completed by the parent, the form can be used by administrators and/or Vermont State enforcement agencies to resolve the case.

Recommendation 4.5

The Vermont Commissioner of Education should report annually to the Governor and legislature on systemwide compliance with the Anti-Harassment in Education law and make the results of this report available to the public.

Conclusion 5

Inadequate Staffing at the Vermont Department of Education

The Vermont Department of Education brought to the Committee's attention serious staff shortages and limited resources available to the department to combat the problem of racial harassment. Because of this staff shortage, it is difficult for the department to set the elimination of racial harassment as a statewide priority and conduct statewide assessments of the effectiveness of local efforts to promote bias-free school environments. It also becomes difficult for the department to help districts implement professional development programs around this issue and serve as a source for local schools for technical expertise (chapter 3, pp. 55–57).

Recommendation 5.1

The Commissioner of the Vermont Department of Education should create *at least* one full-time staff position within the department solely to address racial harassment and promote racial and ethnic tolerance. This staff person would assess the overall success or failure of a school's attempts to promote a bias-free environment and assist school districts. The Advisory Committee recommends that the commissioner request additional funds from the legislature to support this initiative. We also recommend that the legislature approve this request for increased funds.

Recommendation 5.2

The Commissioner of the Vermont Department of Education should mandate that schools develop and provide each parent with information on ways to register their complaints with either the Vermont Department of Education, the Human Rights Commission, or the U.S. Department of Education's Office for Civil Rights. The information should describe what steps each educational entity and State enforcement agency must take when complaints are received and the level of monitoring and followup that will occur.

Conclusion 6

Use of Racially Biased Curriculum Material and Lesson Plans

Serious curriculum issues exist in the State's public schools. In some instances, teachers employ curriculum materials and lesson plans that promote racial stereotypes. There appears to be no statewide effort to ensure that the Vermont school curriculum is free of racial bias (chapter 2, pp. 10–14, 18–20, 31–34, 43–44, app. 7).

Recommendation 6.1

The Vermont Department of Education should take a leadership role in developing and disseminating to all school districts comprehensive, age-appropriate curricula that celebrate diversity, teach respectful behavior to all people, and develop skills to handle conflict.

Recommendation 6.2

Vermont schools should incorporate multicultural learning materials in individual schools that reflect the diversity of the State population and not simply the diversity present in the individual classroom in any given school year.

Schools should endeavor to promote better tolerance among students by incorporating into lesson plans anti-bias curricula and information regarding diversity issues.

Recommendation 6.3

The Commissioner of the Vermont Department of Education and local school boards should develop a joint task force to assist school reviews of curriculum materials. The commissioner and school boards should notify schools when they are found to be using a curriculum that promotes racial stereotypes.

Recommendation 6.4

The Advisory Committee encourages schools to conduct mandatory teacher and staff training on the issues of racial harassment and proper curriculum selection and development.

Conclusion 7

Reviews and Assessments Pursuant to the Equal Educational Opportunity Act

The 1997 Equal Educational Opportunity Act (Act 60) is an effort by State legislators to equalize school funding across school district lines and to promote overall school quality. The act mandates the Commissioner of the Vermont Department of Education to conduct assessments of each school to determine if educational opportunities are substantially equal to those provided in other schools. However, the act is silent on the issue of racial harassment of minority students and the reporting by each school of its efforts to prevent racial harassment and foster safe and harassment-free environments (chapter 3, pp. 54–55).

Recommendation 7.1

The Advisory Committee urges the Commissioner of the Vermont Department of Education to include in his school quality determination an assessment of the existence of bias-free learning environments in each school.

Conclusion 8

Difficulties in Processing Complaints by the Vermont Human Rights Commission

The Vermont Human Rights Commission, the only State agency specifically empowered to investigate racial harassment incidents, does not have sufficient resources to address effectively incidents in the schools once they are reported.

When complaints are made to the agency, parents of minority students experience long delays between the time a complaint is filed and a “reasonable grounds” determination is made. This is due in part to the small number of staff and the infrequency in which commissioners meet to discuss cases. Even when the commission issues a “reasonable grounds” finding, additional delays may occur while an appropriate remedy is fashioned by the agency, victim, and school district. For this reason, minorities are reluctant to come forward with their concerns and feel that assistance from State agencies will not be forthcoming. The experience of persons dealing with the Human Rights Commission is that they are not informed of the status of their complaints. This has resulted in frustration by parents. In addition, complaint processing delays often have serious implications for students who must confront harassment on a daily basis. In some instances, a parent who files a complaint at the beginning of a school year may not receive notice from the Human Rights Commission that it has found reasonable grounds supporting a charge of discrimination until a substantial portion of the school year is over. It is also likely that some charges may not be investigated and completed before a student graduates from elementary to middle, or middle to high school. Assuming the perpetrator is approximately the same age as the victim, the student(s) perpetrating the harassment may end up in the same school (or classroom) as the victim. Parents reported that having to “start over” with administrators in the new school is problematic, given the fact that they are not aware of the severity of the perpetrator’s previous offenses or their effect upon the victim. Parents at the forum underscored that it is at this time when their children are most vulnerable for repeat instances of racial harassment (chapter 2, pp. 11–13, 22–27, chapter 3, pp. 57–61).

Recommendation 8.1

The Vermont Human Rights Commission should request (and the legislature provide) increased funding so that it can commit sufficient resources to the timely resolution of racial harassment complaints in public schools. Given the damaging effects upon children and the community at large, racial harassment complaints should be given high priority. When incidents of harassment are reported and “accepted” by the

commission, staff should immediately communicate with the victim's parents in writing to inform them of anticipated processing time and steps that will be taken on their behalf. Commission staff should make every effort to process complaints in a timely manner and seek to expedite resolution of the charge. Commission staff should promptly convene a meeting with the victim, the perpetrator, and his or her parents to gather information and remedy the problem.

In the event both the perpetrator and victim have matriculated into the same school, the commission should ensure that administrators are informed of the perpetrator's prior conduct. Throughout the commission's investigation, staff should contact parents monthly to inform them of the ongoing status of their complaint.

Recommendation 8.2

The Vermont Department of Education should develop a coordinated system to process racial harassment complaints in public schools. The department should work with the Human Rights Commission and the U.S. Department of Education's Office for Civil Rights to accomplish this objective. This information sharing system should include the periodic reporting by agencies of their intake and disposition of racial harassment cases. The agencies should develop a comprehensive brochure describing the roles and responsibilities of each agency and the complaint resolution process that can be distributed to parents, teachers, and students. These efforts will assist in eliminating confusion experienced by parents who initiate a complaint to public agencies.

APPENDIX 3

Statement of Concern, *Racism and Harassment in Vermont Public Schools and Communities*, Vermont Advisory Committee, October 2002

In its 1999 report, *Racial Harassment in Vermont Public Schools*, the Vermont Advisory Committee to the U.S. Commission on Civil Rights (the Committee) concluded that racial harassment was both frequent and common across all grade levels and that school personnel were ill equipped and poorly trained to respond appropriately to incidents. The Committee recommended changes for the Vermont Department of Education, local school boards, and public officials, as well as legislative improvements. The report evoked resonance within the civil rights community and served as a key reference on the topic. Indeed, soon after the report was released, a groundswell of activity commenced through advocacy organizations, education officials, church groups, and parents to better monitor racial tensions in schools to ensure safe learning environments and act upon many of the Committee's recommendations.¹

Since releasing its report, the Committee continued its interest in the topic of racial harassment and racism, embarking on a new series of activities to renew attention to this problem. In September 2002, the Committee wrote to educators, public officials, education association members, and organization representatives seeking update information about racial harassment in schools and how legislative and grassroots initiatives succeeded or failed to achieve their desired goals. To gather additional information, the Committee is planning town hall style meetings in various parts of the state in the coming months beginning with Burlington on November 20, 2002, followed by other meetings in 2003. The town hall meetings will create an opportunity for the Committee to learn more about progress as well as problems in addressing racial harassment in schools. These meetings will also facilitate open discussion of the issues between community leaders, local officials, and the public. Afterward, the Committee plans to issue a summary statement of concern based on the information it collects both at the town hall meetings and from responses to its written inquiries. The summary statement will provide an update on selected topics raised in its 1999 report, including current efforts to address racism and racial harassment in the state, and successful exemplary programs that may be considered as possible solutions or models in the future.

The Committee issues this statement to provide a context and starting point for discussion and action, and makes the following observations:

- The Committee believes that problems cited in its 1999 report persist despite significant efforts to find solutions. Moreover, the Committee believes that racism and racial harassment in schools are symptoms of a much larger problem of intolerance in Vermont communities.
- The Committee has learned of severe harassment cases, which may have been exacerbated by school administrators' failure to respond effectively to end harassing conduct. The Advisory Committee is concerned that, following incidents of harassment, schools may fail to protect the victim from further harassment and do not take effective disciplinary action against the perpetrator. This is inconsistent with state law mandating anti-harassment procedures implemented by school boards.

¹ Some of the positive developments occurring after the report's release include a) a joint resolution by the Vermont Senate and House of Representatives condemning racism in Vermont communities and vowing to address the problem; b) enactment of a new state law increasing the Vermont's Department of Education's regulatory authority; c) efforts by various state education associations to ease tensions in schools; and d) forums, discussion groups, and advocacy work by community organizations.

- The Vermont Department of Education and various education/professional associations instituted laudable programs to both respond to incidents and improve overall school climate.² The Department has begun a safe schools project and a character education project to help start mediation sessions in schools; and education associations have informed their members of the problem and conducted training and discussion groups. However, staffing resources and assistance offered to schools may not be enough to address the problem on a systemic, statewide basis. We are interested in probing into the reasons for these deficiencies. The Committee believes that schools should strive to implement best practices and use all available resources.

Most of the efforts by schools and educational and community organizations to address racial harassment have been aimed at increasing understanding of and respect for diversity. This is a critically important goal, and it is appropriate that schools take the lead in the effort, since schools are our best hope for promoting social change and a better future for our children. *However, the Committee is concerned that fostering awareness of diversity may be confused with the equally important goal of confronting racism, racial bullying, and other forms of discriminatory harassment. Achieving this goal requires a determined effort to enforce anti-harassment policies and to deal forthrightly with racial harassment and bullying incidents as well as other forms of discriminatory behavior.* Schools are legally required to make this effort, which is also necessary to ensure a safe learning environment for all students.

The Vermont Advisory Committee to the U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency of the federal government. Its members, appointed by the President and Congress, are Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso and Commissioners Jennifer C. Braceras, Christopher Edley Jr., Peter N. Kirsanow, Elsie M. Meeks, Russell G. Redenbaugh, and Abigail Thernstrom. Les Jin is staff director. Ki-Taek Chun is director of the Eastern Regional Office. The Commission has advisory committees in all states and the District of Columbia to assist in its fact-finding function. Committees receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials, and forward advice and recommendations to the Commission. The Vermont Advisory Committee is one of 51 such committees whose members serve without compensation.

Members of the Committee are Chairperson Eric D. Sakai of Randolph, Wanda M. Arce of Milton, Hugo Martínez Cazón of Burlington, Kimberly B. Cheney of Montpelier, M. Jerome Diamond of Montpelier, Pat Elmer of Alburg, Melanie S. Gustafson of Burlington, Philip H. Hoff of Burlington, Noah Kitty MAHL of Brattleboro, Charles E. Memusi Johnson of Thetford, Michael P. Reilly of Burlington, Christopher D. Roy of Burlington, Karen F. Saudek of East Montpelier, and John Tucker of Burlington. For additional information about the Committee's upcoming activities contact:

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² The Committee notes two initiatives here: a statewide teacher training program on diversity issues, cosponsored by the Vermont Department of Education and a coalition of state education association representatives, advocates, and community leaders; and the Vermont Civility Project, a program initiated by the Vermont Department of Education to respond to harassment in schools.

APPENDIX 4

List of Government Officials, Community Organization Representatives, and Educators Receiving the Committee's Questions

Government Officials

- VT Human Rights Commission (Robert Appel, director)
- VT Department of Education (Commissioner Ray McNulty)
- VT Attorney General–Civil Rights Unit (Katherine A. Hayes, dir., assistant AG) (former)
- VT Department of Public Safety–Criminal Information Center (Max Schlueter, director)
- VT State Police (Lt. Col. Thomas A. Powlovich, director, Lt. Craig Iverson, director of training)

Community Representatives

- First Unitarian Universalist Society (Rev. Gary Kowalski)
- CEROS/United Way (Heather Iorio, coordinator)
- ReVisions (Merryn Rutledge, president)
- VT American Civil Liberties Union (Benson Scotch, executive director)
- VT Institute for Science, Math and Technology (Kathy Johnson, director of equity initiatives)
- VT Legal Aid (Eric Avildson, executive director)
- VT State Center for Independent Living (Deborah Lisi-Baker, executive director)

Education Unions/Associations

- VT Principals' Association (Scott Blanchard, executive director)
- VT Superintendents Association (Jeff Francis, executive director)
- VT School Boards Association (Edith Miller, executive director)
- VT National Education Association (Angelo Dorta, president)

School Districts

- Burlington School District (Betsy Liley, grants & special projects director)
- Chittenden Central Supervisory Union (Michael Deweese)*
- Franklin Central Supervisory Union (Terence Keating, assistant superintendent)
- Chittenden East Supervisory Union (Gail Conley, superintendent)
- South Burlington School District (Bruce Chattman, superintendent)
- Colchester School District (Pamela Carnahan, superintendent)
- Windham Central Supervisory Union (Cheryl Ruth)*
- Addison–Rutland Supervisory Union (Ronald Ryan, superintendent)
- Rutland Central Supervisory Union (John Kaldy, superintendent)
- Washington Central Supervisory Union (Robbe Brook, superintendent)

* Indicates no response.

APPENDIX 5

Questions to Government Officials, Community Organization Representatives, and Educators

VT Human Rights Commission

(Robert Appel, director)

With regards to incidents of harassment and hazing in public schools, we have the following 4 questions.

1. Please describe the circumstances that prompted the Commission to make racial harassment in public schools a top enforcement priority. Given this priority, what has the Commission done or plan to do to meet its objectives?
2. Which state agencies examine and evaluate the effectiveness of Vermont law on harassment and hazing in the public schools and communities? Please describe what work the Commission has done in this area.
3. In what ways has the Commission's efforts to eliminate harassment in Vermont schools and communities been hampered by inadequate funding or staffing, or limited jurisdiction? What legislative changes or new legislation would the Commission or staff suggest to improve existing civil rights laws in Vermont?
4. When students encounter harassment, some ultimately file lawsuits against schools for civil rights violations.
 - a) How many lawsuits have been filed against schools either by parents, students, the Commission, or outside parties in each of the last 5 years?
 - b) In those schools that have been sued, what changes have taken place since the lawsuit?
 - c) What resources and assistance does the Commission provide to help schools bring about changes when sued?

The Committee is also interested in getting information regarding the overall racial climate in the state.

5. Please provide the number of incidents of harassment or racial tension reported to you during each of the last 5 years. How do you learn of incidents—are they reported directly to you, referred by other agencies, etc.? There may be incidents reported in the media but not reported to you as a complaint. If there were, please provide the number of incidents you learned of for each of the last 5 years.
6. Please describe the routine information sharing that exists between the Human Rights Commission, the Department of Education, the Vermont Attorney General's Office, school personnel, and other state agencies concerning incidents of harassment and racial tension.
7. The Committee learned of the Commission's plans to disseminate information to the public on harassment, how to file a complaint, legal remedies, etc. What actions is the Commission planning to take?

VT Department of Education
(Ray McNulty, commissioner)

1. Which state agencies examine and evaluate the effectiveness of Vermont law on harassment and hazing in the public schools and communities? Please describe what work the Department has done in this area.
2. Under Vermont law 16 VSA § 565, each school board is required to adopt and enforce anti-harassment and hazing policies.
 - a) How does the Department monitor whether or not schools are in compliance with the law?
 - b) How many schools are in compliance?
3. Under Vermont law 16 VSA § 164, the state board of education is required to submit annual reports regarding the numbers and types of harassment or hazing complaints and responses to those complaints.
 - a) How do you collect information needed for this report?
 - b) Please provide a copy of these reports for each of the last 3 years.
4. Under Vermont law 16 VSA § 165, schools must develop and implement a comprehensive plan to meet school quality standards including plans to ensure a safe, orderly, and civil environment that is free from harassment. School boards are required to report annually to their community how individual schools meet this standard.
 - a) Does the Department monitor this reporting?
 - b) What proportion of schools are complying with this requirement?
 - c) If the Department does not monitor this reporting, which agency or entity does?
5. When students encounter harassment, some ultimately file lawsuits against schools for civil rights violations.
 - a) How many lawsuits have been filed against schools either by parents, students, the Department, or outside parties in each of the last 3 years?
 - b) In those schools that have been sued, what changes have taken place since the lawsuit?
 - c) What resources or assistance does the Department provide to help schools bring about change when sued?
6. Please describe the Department's programs designed to help teachers, superintendents, principals and staff to respond to harassment and hazing incidents, including
 - a) the number, frequency, and duration of training sessions statewide provided in the last 3 years, and
 - b) the target audience.
7. In what ways has the Department's efforts to eliminate harassment in Vermont schools and communities been hampered by inadequate funding or staffing, or limited jurisdiction? What improvements would you recommend in existing state law or state board of education policies, rules, practices, and activities to eliminate harassment in public schools?
8. Under the *Framework of Standards and Learning Opportunities* (issued in Fall 2000), schools strive to meet agreed upon goals or objectives. What proportion of schools have developed or implemented programs to reach goals regarding: cultural expression (4.3), effects of prejudice (4.4), concepts of culture (6.13), and diversity (6.14)?
9. The Department has instituted a "safe schools" project and received a grant for a "character education" project following new state law mandating safe and healthy learning environments.

- a) To what extent have these programs achieved their goals?
- b) Is the level of staffing and funding sufficient to achieve the goals and respond to the concerns expressed in the minority community regarding harassment in schools?
- c) Please describe the mediation or alternative dispute resolution services conducted by the project coordinators in the past 3 years in public schools to resolve harassment/hazing incidents. How useful do you think they were?

Please provide the Committee with a copy of the 2001 school quality standards report(s).

VT Attorney General—Civil Rights Unit

(Katherine A. Hayes, director, assistant AG) (former)

1. Please provide the number of incidents of harassment, racial tensions, or hate crimes the attorney general's office received for each of the last 5 years? What proportion of these is school related?
2. The 1999 amendments to the Vermont Hate Crimes Act expand the ability of victims of hate crime victims to seek injunctions in Superior Court.
 - a) Please provide information on the number of injunctions sought, and the nature of the relief requested.
 - b) Which state or local agency collects this information?
 - c) How does the attorney general assist victims seeking injunctions?
3. We understand that the Attorney General's office plans to provide assistance to the Vermont Department of Education to address schools' failure to adopt policies and procedures to stop harassment. Please provide details regarding this assistance including when the assistance will begin.

VT Department of Public Safety

(Dr. Max Schlueter, director, Criminal Information Center)

1. In the Committee's 1999 *Racial Harassment in Vermont Public Schools* report, we noted the Center's collection of bias-related crime data (including assaults involving students in public schools and colleges) from state and local police departments. What is the number of bias-related crimes reported during each of the last 5 years, disaggregated by race, age of victim, and location (i.e., primary, secondary, or post-secondary schools)?

VT State Police

(Lt. Col. Thomas A. Powlovich, director)

1. In the past it was reported that some police officers are not trained to recognize, or fail to accurately classify, hate crimes in official police reports. What training is provided to address this issue including the ability to recognize criminal acts that may be racially motivated?
2. When officers respond to school-based violence or racially motivated incidents in schools, what policies or procedures govern the action of responding officers? Is this response to school-based incidents different than that employed outside the school setting?

cc: Lt. Craig Iverson, director of training

COMMUNITY REPRESENTATIVES

Unitarian Universalist Society

CEROS/United Way

ReVisions

VT ACLU

VT Institute for Science, Math and Technology

VT Legal Aid

VT State Center for Independent Living

1. With regard to racial harassment in schools, in what proportion of these cases has your organization become involved in by providing assistance, contacting victims, referrals to other agencies, etc.?
2. How many cases or incidents has your organization referred to the Vermont Human Rights Commission in the last 3 years? In what proportion of these cases does the Human Rights Commission provide feedback to your organization on the case outcomes?
3. What support do you provide to students and families of students who are the victims of racial harassment? In what proportion of cases are you able to provide support?
4. Are you aware of the Department of Education's "safe school" and "character education" projects? If so, do you think they have been effective in preventing future harassment incidents?
5. Please describe programs or practices your organization has tried in the state to address racial harassment and racism, and/or promoting equity, anti-racism, and diversity which you found useful and are willing to repeat?

EDUCATION UNIONS/ASSOCIATIONS

Scott Blanchard, executive director, VT Principals' Association

Jeff Francis, executive director, VT Superintendents Association

Edith A. Miller, executive director, VT School Boards Association

Angelo J. Dorta, president, VT National Education Association

1. What collaborative efforts has your organization (and its standing committees or local affiliates) made with community groups to eliminate harassment in schools?
2. Describe your organization's work since 1999 to improve racial tensions in Vermont schools and increase awareness of the problem among your standing committees or local affiliates.
3. In the past 3 years, has your organization conducted surveys of racial tensions or school compliance with anti-harassment and hazing laws? If so, can you provide us with the results?

SCHOOL DISTRICT SUPERINTENDENTS

(Addison, Chittenden, Burlington, Rutland, Washington)

1. With regard to racial harassment and hazing in schools,
 - a) what mechanisms are in place to track the frequency of incidents, and
 - b) how many incidents have occurred in schools in your district in each of the last 3 years?
2. As you know, state law requires an investigation of allegations of harassment. How many investigations were conducted in your district for each of the last 3 years?

3. When students encounter harassment, some ultimately file lawsuits against schools for civil rights violations.
 - a) How many lawsuits have been filed against schools either by parents, students, the district, or outside parties in each of the last 3 years?
 - b) In those schools that have been sued, what changes have taken place since the lawsuit?
 - c) What resources does your district provide to help schools bring about change?
4. By law, school boards are required to have harassment prevention policies in place. What proportion of schools in your district have a policy as required? How do you monitor compliance by individual schools?
5. Since 1999, what support does school principals, teachers, or staff in your district provide to parents of students following incidents of harassment? What training has been provided to school principals, teachers, or staff to respond to harassment incidents and prevent their future occurrence?
6. For your district as a whole, please describe the staff resources allocated to address harassment issues as a proportion of total staff resources and full-time and equivalent staff?
7. Have schools in your district sought the advice of community groups as resources in developing effective harassment prevention strategies, If so, how have they sought this advice and what were their suggestions?
8. Does your district use particular curriculum or materials to enhance the understanding of different cultures and civil rights concerns? If so, what materials or curriculum have been used? What curriculum changes, if any, would you say are needed to help promote school environments free of harassment?
9. We assume the issue of racial harassment is a matter of interest to you. How do you assess its presence and prevalence in schools in your district? Do you speak with principals, staff, and students, or do you conduct surveys? What else do you do?
10. In what ways has the district's efforts to eliminate harassment in Vermont schools and communities been hampered by inadequate funding or staffing, or limited jurisdiction or legal bases? What improvements would you recommend in existing state law or school district policies, rules, practices, and activities to eliminate harassment in public schools?

APPENDIX 6

Excerpts from Vermont House of Representatives Journal, May 22, 2003, Second Reading of House Bill 113

On motion of Rep. Symington of Jericho, the rules were suspended and House bill, entitled An act relating to harassment in schools; Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Hingtgen of Burlington, for the committee on Education, to which the bill had been referred, reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

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

(26) "Harassment" means unlawful harassment which conduct that constitutes a form of unlawful discrimination. It means verbal, written, visual, or physical conduct based on or motivated by a student'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. Harassment includes:

(A) 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.

(B) Racial harassment which means conduct directed at the characteristics of a person'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.

(C) Harassment of members of other protected categories which means conduct directed at the characteristics of a person'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. 2. 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.

(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.

(c) As used in this section:

(1) "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.

(2) "Designated employee" means an employee who has been designated by an educational institution to receive complaints of harassment pursuant to 16 V.S.A. subdivision 565(c)(1) of this title or in accordance with the harassment policy of a postsecondary school.

(3) "Notice" means information that 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 knowledge of the alleged conduct.

Thereupon, the bill was read the second time and the report of the committee on Education was agreed to. Pending the question, Shall the bill be read the third time? Rep. Hingtgen of Burlington moved to commit the bill to the committee on Judiciary, which was agreed to.

APPENDIX 7

Vermont House of Representatives Bill 113 as Originally Introduced (2003–2004 Session)

[Underlined and stricken text shows where the bill proposes to amend previous laws.]

Introduced by Representative Larson of Burlington
Referred to Committee on January 30, 2003
Subject: Education; public accommodations; harassment

Statement of purpose: This bill proposes to expand the definition of harassment in schools and other public accommodations to clarify the meaning of sexual and racial harassment; require that school harassment policies include a provision that a person who commits harassment and a school or school district in which harassment is committed may be liable in civil court; specify elements of harassment prevention training required for teachers; require that the commissioner of education certify school civil rights officers appointed by each school board; clarify that a right of action exists in the public accommodations law for harassment that takes place in a school; and provide an affirmative defense for a school official who promptly responds to a harassment complaint.

AN ACT RELATING TO HARASSMENT IN SCHOOLS

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

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

(26) “Harassment” means unlawful ~~harassment which constitutes a form of discrimination. It~~ means verbal or physical conduct or behavior based on a student’s or motivated by a perceived race, creed, religion, color, ancestry, national origin, marital status, sex, sexual orientation, place of birth, age, or disability and which has the purpose or effect of substantially interfering with a student’s educational performance or creating an intimidating, hostile or offensive environment. Harassment includes:

(A) Sexual harassment is also a form of unlawful harassment and which means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

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

(B) 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 ~~the~~ conduct or behavior has the purpose or effect of either creating an intimidating, hostile, or offensive school environment or substantially undermining and detracting from or interfering with a student’s educational performance or creating an intimidating, hostile or offensive educational environment access to the school’s resources and activities.

(B) Racial harassment, which means unwelcome verbal, written, or physical conduct directed at the characteristics of a person’s actual or perceived race or color, such as using nicknames emphasizing stereotypes, racial slurs, comments, insults, or taunts on manner of speaking and negative references to racial customs when such conduct or behavior has the purpose or effect of either creating an intimidating, hostile, or offensive school environment or substantially undermining and detracting from or interfering with the student’s educational performance or access to the school’s resources and activities.

Sec. 2. 16 V.S.A. § 565(b)(1) is amended to read:

(1) The harassment prevention policy shall include:

(A) A statement prohibiting harassment of a student.

(B) The definition of harassment pursuant to subdivision 11(a)(26) of this title.

(C) Consequences and appropriate remedial action for staff or students who commit harassment, and the school and school district in which the harassment was committed. Consequences may include an action for injunctive relief or for civil joint and several liability, or both, pursuant to 9 V.S.A. § 4506(e). Prompt and appropriate remedial action taken by an employee or agent of the school or school district which is reasonably calculated to stop the harassment shall constitute an affirmative defense to a claim. Nothing in this section shall prohibit corrective action or discipline of a student, school employee, or school agent for conduct which is harassment but does not rise to the level of unlawful harassment.

(D) A procedure that directs students and staff how to report violations and file complaints.

(E) A procedure for investigating reports of violations and complaints.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to harassment. At a minimum, training shall include techniques for:

(i) documenting the report of an incident of potential harassment;

(ii) acting immediately when an incident is reported;

(iii) providing support to a person who has been harassed and ensuring that the person is not subject to retaliation;

(iv) taking prompt and appropriate remedial action to end the harassment; and

(v) reporting to the parent or guardian as soon as possible, using means allowed within confidentiality laws, the result of an investigation and the remedial action taken.

(G) A process for reporting the number and types of complaints of harassment, including the results of investigations and the responses to both the state board of education and the Vermont human rights commission.

Sec. 3. 16 V.S.A. § 565(c) is amended to read:

(c) Each school district shall establish rules setting forth procedures for dealing with harassment and hazing of students which include:

~~(1) Annual designation of two or more people within the institution to receive complaints and a procedure for publicizing those people's availability.~~

~~(2)~~ A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

~~(3)~~~~(2)~~ A statement that acts of retaliation for reporting of harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9.

Sec. 4. 16 V.S.A. § 656(d) is amended to read:

(d) Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this section to students, custodial parents or guardians of students, and staff members. Notice to students shall be in age-appropriate language and should include examples of harassment and hazing. At a minimum, this notice shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school and shall be posted prominently in an area of the school routinely visited by students and staff. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students about the substance of the policy and procedures in order to help prevent harassment, and hazing.

Sec. 5. 16 V.S.A. § 567 is added to read:

§ 567. CIVIL RIGHTS OFFICERS

(a) Annually, each school district board shall forward to the commissioner the names of two or more school employees for each school in its district who are to be designated as school civil rights

officers to receive and investigate complaints of harassment and hazing. The commissioner shall give a certificate of appointment to each officer. If a board fails to recommend officers, the commissioner, after 30 days' notice in writing, shall appoint two civil rights officers for each school in the district.

(b) A school board of a school district which maintains more than one school may appoint two civil rights officers for the entire district with permission of the commissioner.

(c) The commissioner may remove a school civil rights officer at any time for cause. Vacancies shall be filled in the same manner as the original appointment.

(d) The commissioner, in collaboration with the human rights commission and the attorney general, shall offer annual training to all school civil rights officers. The training shall include a review of the provisions of law relating to harassment and hazing in a school, a description of model hazing and harassment policies developed by the commissioner, and guidance on receipt, investigation, and resolution of complaints of harassment and hazing.

Sec. 6. 9 V.S.A. § 4506(e) is added to read:

(e) A person aggrieved by a violation of this chapter involving harassment, as defined in 16 V.S.A. § 11(26), in a school may bring an action for injunctive relief and compensatory and punitive damages and any other appropriate relief against the school, school district, and perpetrator of the harassment, who shall be jointly and severally liable in the event that the action is proven in the superior court of the county in which the violation is alleged to have occurred. The prompt and appropriate remedial action by an employee or agent of the school or school district which is reasonably calculated to stop the harassment shall constitute an affirmative defense to the claim.

Sec. 7. 21 V.S.A. § 495d(1) and (13) are amended to read:

(1) "Employer" means any individual, organization, or governmental body including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, and any agent of such employer, which has one or more individuals performing services for it within this state. "Agent of such employer" includes a supervisor who acts in violation of this chapter or who has actual or constructive knowledge of unlawful conduct and who fails to take prompt appropriate remedial action. An agent of an employer shall be individually liable to the affected employee.

(13) "Harassment" means a form of discrimination which is unlawful verbal or physical conduct or behavior based on or motivated in whole or in part by a person's actual or perceived race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth, age, or disability. Harassment includes:

(A) "Sexual harassment," which is a form of ~~sex~~ unlawful discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(A)(i) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or

(B)(ii) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or

(C)(iii) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; and

(B) "Racial harassment," which is a form of unlawful discrimination and includes unwelcome verbal, written, or physical conduct directed at the characteristics of a person's actual or perceived race or color such as using nicknames, emphasizing stereotypes, racial slurs, comments, insults, or taunts on manner of speaking, and negative references to racial customs when:

(i) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or

(ii) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or

(iii) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.