
Public Comment

To: State Board of Education
Submitted by: Heather Bouchey, Interim Secretary, AOE
Subject: Proposed Rule 2000
Date: October 15, 2023

The Agency of Education recognizes that the members of the State Board and in particular the members of the Board's Education Quality Standards Rule Update Committee have devoted significant time and resources to the development of Proposed Rule 2000. Thank you for your ongoing efforts to update this important series of education regulations and to, as the proposed rules state, "ensure that all Vermont students are afforded educational opportunities that are substantially equal in quality and are equitable, antiracist, culturally responsive, anti-discriminatory, and inclusive."

The Agency submits the following comment for the Board's consideration for the final draft of the proposed rule.

The definitions are listed in Proposed Rule 2114 and include many new definitions. In defining "discrimination," the Agency is concerned that the Board would be creating unintended negative consequences. In the proposed rule, "discrimination" means:

"...any distinction, exclusion, classification, restriction or preference based on any ground, such as race, ethnicity, skin color, sex, sexual orientation, gender identification, language, religion, political or other opinion, disability, national, social or geographic origin, citizenship or immigration status, income or property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination is practiced by individuals and groups, and it is expressed systemically through the structures, laws, practices, and policies of public and private institutions, employers, and organizations."

The proposed rule explicitly states in Proposed Rule 2110, Statement of Purpose, that "this manual adopts a definition of Discrimination that is broader than its legal definition. Nothing herein shall create a private right of action." However, nowhere is it clear whether the definition of "discrimination" will apply in other State Board of Education Rules, or in other education contexts. This is problematic.

The proposed definition of discrimination is markedly different from any definition of the same term in state or federal civil rights law. When and if it is applied, even mistakenly, in other contexts, problems will ensue. A perhaps overly simplistic example illustrates just one potential



consequence that is contrary to the clearly stated intent of the proposed rule. Because the proposed definition includes “political or other opinion,” as a category that no activity may have the “purpose of effect” of “impairing “enjoyment” or of “freedoms in the political, economic, social, cultural, civil or any other field,” the definition could be cited to prohibit a school from disciplining a student who has harassed a classmate. For example, if the disciplined student expressed a “political or other opinion” in the harassment, parents may argue that the school is prohibited from taking away the student’s recess as a consequence. Recess would fall within the meaning of “freedoms in . . . any other field” along with any number of other activities at school.

The Agency urges the Board to consider whether the proposed definition of discrimination is necessary to accomplish the purpose of the rule, and if so, whether it is prudent to formalize a definition of a term that is so different from other legal definitions of the same word. At minimum, it would be helpful to expressly and clearly limit application of the definition to only certain rules within the Education Quality Standards.