

To: Xusana Davis
From: Rebecca McBroom
Date: January 19, 2024
Re: Feedback to Working Group Protections from Harassment and Discrimination in Schools Proposals

Vermont-NEA members, like all educators, put students first every day. Together with parents, our members are dedicated to a safe, nurturing, and trauma-free learning environment for all students. We unequivocally denounce any type of hazing, harassment, and bullying of students, especially those from historically marginalized communities, those suffering from trauma, economic displacement, food insecurity, or unstable housing. Vermont-NEA members work tirelessly to ensure our schools are havens for students to learn and safe places for educators to work.

As we see it, VSBA's proposal offers a starting point in lowering the unduly high legal standard that students (or their families) must prove that harassment they are enduring at school must be severe, pervasive and persistent in order to be legally actionable. However, we believe that the VSBA's proposal should go further. We agree with the HRC and others that changing language from "severe, pervasive and persistent" to "substantially adversely affected" modestly changes terminology but does not adequately provide the legal protections that our students deserve. We also agree that the focus on a student's equal access to educational opportunities or benefits, falls short of the impact that harassment can and often does have on students – i.e a student's emotional and mental wellbeing should be protected just as much as their access to educational opportunities.

However, we do not fully support the HRC's proposal either. We believe that this proposal does not consider the unique aspects of our public schools and the variables that school districts must address when handling hazing, harassment and bullying issues. Regarding the HRC's 16 V.S.A. § 11(a)(26)(C): we believe that the statutory definition of "harassment" should be defining what harassment is, not what factors do not define harassment. This definition is vague and would not clarify this area of law or help schools become safer learning environments.

Furthermore, regarding the HRC's proposed modification to 12 V.S.A. §570(f), we believe that this recommendation creates a strict liability standard for school districts. Under the proposed language, if one student harassed another student based on a protected category, even if the school district was unaware of that action, a plaintiff could prevail in a legal action against the district. That is not viable. Students have due process and first amendment speech rights within public schools. The proposed language rightfully belongs in the fair employment and fair housing statutes, where they currently appear, but not here. An employer is liable for its own conduct and the conduct of its employees, making it sensible in the Fair Employment Act, and the same is true for rental or real estate agents – making it sensible in the Fair Housing Act. Public schools have different considerations – these are not adults interacting with other adults. Furthermore, the children in our schools who are harassing and bullying other students often have their own set of emotional, domestic and socioeconomic issues that are contributing to this behavior. They are likely in need of support that they aren't receiving elsewhere. How do we navigate that?

VTNEA believes that any statutory provision must mandate that the AOE create a policy for addressing HHB that fully articulates a HHB process, which includes the handling of complaints; the investigatory process; an appeal process; and implementing the findings. This policy must be established and finalized before the law goes into effect.

Furthermore, an additional, fully-funded position within each school and/or school district (depending on size of school district and individual schools withing district) must be created and time must be permitted for recruitment and hiring before this statute goes into effect.

Finally, I propose the following changes to the statutory language as I believe it addresses HRC's concerns with the VSBA's proposal:

I recommend ADDING (26)(C) language to the following effect¹

Notwithstanding any judicial precedent to the contrary, the conduct described in this subdivision (a)(26) need not be severe or pervasive to constitute harassment. Creation of a hostile environment also constitutes harassment. A hostile environment exists where conduct:

- (a) has or would have the effect of interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or
- (b) reasonably causes or would reasonably be expected to cause a student to fear for the student's emotional safety; or
- (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or
- (d) Occurs off school property and creates or would foreseeably create a risk of substantial disruption with the school environment, whether it is foreseeable that the conduct threatens, intimidation or abuse might reach school property.

¹ instead of adding the hostile environment language in 26(B)(i):