

1 H.691

2 Introduced by Representatives Partridge of Windham, Howard of Rutland City,

3 Lorber of Burlington, Marek of Newfane, Pellett of Chester,

4 Spengler of Colchester and Till of Jericho

5 Referred to Committee on

6 Date:

7 Subject: Education; bullying; civil violation

8 Statement of purpose: This bill is divided into three parts:

9 (1) First, it proposes to expand the definition of “bullying” in the
10 educational context to include actions committed electronically. It would
11 permit school administrators to discipline students for actions conducted
12 outside normal school hours and off school grounds if the action substantially
13 undermined or interfered with a student’s educational performance or access to
14 school resources or created an intimidating, hostile, or offensive environment.
15 In addition, it would authorize use of nonschool resources to provide
16 alternative education services to a student who has been suspended or expelled
17 for bullying another student.

18 (2) Second, the bill would require that bullying prevention and
19 investigation policies are as stringent as those required in connection with
20 harassment.

1 (3) Finally, the bill would establish bullying of a student by another
2 student as a civil offense.

3 An act relating to bullying in educational settings

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

5 * * * Bullying by Electronic Activity * * *

6 Sec. 1. 16 V.S.A. § 11(a)(32) is amended to read:

7 (32) “Bullying” means any overt act or combination of acts, including
8 an act conducted by electronic means, directed against a student by another
9 student or group of students and which:

10 (A) is repeated over time;

11 (B) is intended to ridicule, humiliate, or intimidate the student; and

12 (C)(i) occurs during the school day on school property, on a school
13 bus, or at a school-sponsored activity, or before or after the school day on a
14 school bus or at a school-sponsored activity; or

15 (ii) does not occur during the school day on school property, on a
16 school bus, or at a school-sponsored activity and that has the purpose or effect
17 of objectively and substantially undermining and detracting from or interfering
18 with a student’s educational performance or access to school resources or
19 creating an objectively intimidating, hostile, or offensive environment.

1 Sec. 2. 16 V.S.A. § 1162 is amended to read:

2 § 1162. SUSPENSION OR EXPULSION OF PUPILS

3 (a) A superintendent or principal may, pursuant to policies adopted by the
4 school board that are consistent with state board rules, suspend a pupil for up
5 to 10 school days or, with the approval of the board of the school district, expel
6 a pupil for up to the remainder of the school year or up to 90 school days,
7 whichever is longer, for misconduct:

8 (1) on school property, on a school bus, or at a school-sponsored activity
9 when the misconduct makes the continued presence of the pupil harmful to the
10 welfare of the school ~~or for misconduct~~;

11 (2) not on school property, on a school bus, or at a school-sponsored
12 activity where direct harm to the welfare of the school can be demonstrated; or

13 (3) not on school property, on a school bus, or at a school-sponsored
14 activity where the misconduct has the purpose or effect of objectively and
15 substantially undermining and detracting from or interfering with a student's
16 educational performance or access to school resources or creating an
17 objectively intimidating, hostile, or offensive environment.

18 (b) Nothing contained in this section shall prevent a superintendent or
19 principal, subject to subsequent due process procedures, from removing
20 immediately from a school a pupil who poses a continuing danger to persons or
21 property or an ongoing threat of disrupting the academic process of the school,

1 or from expelling a pupil who brings a weapon to school pursuant to section
2 1166 of this title.

3 ~~(b)~~(c) Principals, superintendents, and school boards are authorized and
4 encouraged to provide alternative education services or programs to students
5 during any period of suspension or expulsion authorized under this section,
6 including appropriate nonschool resources as part of a comprehensive response
7 to misconduct.

8 * * * Bullying; Notice and Response; Prevention Policies * * *

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

10 § 14. BULLYING; HARASSMENT; NOTICE AND RESPONSE

11 (a) An educational institution that receives actual notice of alleged conduct
12 that may constitute bullying or harassment shall promptly investigate to
13 determine whether ~~harassment~~ either occurred. After receiving notice of the
14 alleged conduct, the school shall provide a copy of its bullying or harassment
15 policy, including its ~~harassment~~ related investigation procedure, to the alleged
16 victim and the alleged perpetrator. If either the alleged victim or the alleged
17 perpetrator is a minor, the copy of the policy shall be provided to the person's
18 parent or guardian. Nothing herein shall be construed to prohibit educational
19 institutions from investigating and imposing disciplinary consequences upon
20 students for misconduct. Elementary and secondary school officials shall
21 strive to implement the plan developed in accordance with subdivision

1 1161a(a)(6) of this title in order to prevent misconduct from escalating to the
2 level of bullying or harassment.

3 (b) In regard to claims brought pursuant to 9 V.S.A. chapter 139, if after
4 notice, the educational institution finds that the alleged conduct occurred and
5 that it constitutes harassment, the educational institution shall take prompt and
6 appropriate remedial action reasonably calculated to stop the harassment. No
7 action shall be brought pursuant to 9 V.S.A. chapter 139 until the
8 administrative remedies available to the claimant under the policy adopted by
9 the educational institution pursuant to subsection 166(e) or subdivision
10 565(b)(1) of this title or pursuant to the harassment policy of a postsecondary
11 school have been exhausted. Such a showing shall not be necessary where the
12 claimant demonstrates that: (1) the educational institution does not maintain
13 such a policy; (2) a determination has not been rendered within the time limits
14 established under subdivision 565(b)(1) of this title; (3) the health or safety of
15 the complainant would be jeopardized otherwise; (4) exhaustion would be
16 futile; or (5) requiring exhaustion would subject the student to substantial and
17 imminent retaliation.

18 (c) As used in this section:

19 (1) "Designated employee" means an employee who has been
20 designated by an educational institution to receive complaints of bullying or

1 harassment pursuant to subdivision 565(c)(1) of this title or in accordance with
2 the harassment policy of a postsecondary school.

3 (2) "Educational institution" means a Vermont public or independent
4 school or a postsecondary school that offers or operates a program of college
5 or professional education for credit or degree in Vermont.

6 (3) "Notice" means a written complaint or oral information that bullying
7 or harassment may have occurred which has been provided to a designated
8 employee from another employee, the student allegedly subjected to the
9 bullying or harassment, another student, a parent or guardian, or any other
10 individual who has reasonable cause to believe the alleged conduct may have
11 occurred. If the complaint is oral, the designated employee shall promptly
12 reduce the complaint to writing, including the time, place, and nature of the
13 conduct, and the identity of the participants and complainant.

14 Sec. 4. 16 V.S.A. § 565 is amended to read:

15 § 565. HARASSMENT ~~AND~~ HAZING, AND BULLYING PREVENTION
16 POLICIES

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

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

7 (1) The harassment prevention policy shall include:

8 (A) A statement prohibiting harassment of a student.

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

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

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

18 (E) A procedure for investigating reports of violations and
19 complaints. The procedure shall provide that, unless special circumstances are
20 present and documented by the school officials, an investigation is initiated no
21 later than one school day from the filing of a complaint and the investigation

1 and determination by school officials are concluded no later than five school
2 days from the filing of the complaint with a person designated to receive
3 complaints under subdivision (c)(1) of this section. All internal reviews of the
4 school's initial determination, including the issuance of a final decision, shall,
5 unless special circumstances are present and documented by the school
6 officials, be completed within 30 days after the review is requested.

7 (F) A description of how the board will ensure that teachers and other
8 staff members receive training in preventing, recognizing and responding to
9 harassment.

10 (2) The hazing prevention policy shall include:

11 (A) A statement that hazing, as defined in subdivision 11(a)(30) of
12 this title, is prohibited.

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

15 (C) A procedure for investigating reports of violations and
16 complaints.

17 (D) Circumstances under which hazing may be reported to a law
18 enforcement agency.

19 (E) Appropriate penalties or sanctions, or both, for organizations
20 which or individuals who engage in hazing, and revocation or suspension of an

1 organization's permission to operate or exist within the institution's purview, if
2 that organization knowingly permits, authorizes, or condones hazing.

3 (F) A description of how the board will ensure that teachers and other
4 staff members receive training in preventing, recognizing and responding to
5 hazing.

6 (3) The bullying prevention policy shall include:

7 (A) A statement prohibiting bullying of a student.

8 (B) The definition of bullying pursuant to subdivision 11(a)(32) of
9 this title.

10 (C) Consequences and appropriate remedial action for a student or
11 group of students who commits bullying. At all stages of the investigation and
12 determination process, school officials are encouraged to make available to
13 complainants alternative dispute resolution methods, such as mediation, for
14 resolving complaints.

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

17 (E) A procedure for investigating reports of violations and
18 complaints. The procedure shall provide that, unless special circumstances are
19 present and documented by the school officials, an investigation is initiated no
20 later than one school day from the filing of a complaint, and the investigation
21 and determination by school officials are concluded no later than five school

1 days from the filing of the complaint with a person designated to receive
2 complaints under subdivision (c)(1) of this section. All internal reviews of the
3 school's initial determination, including the issuance of a final decision, shall,
4 unless special circumstances are present and documented by the school
5 officials, be completed within 30 days after the review is requested.

6 (F) A description of how the board will ensure that teachers and other
7 staff members receive training in preventing, recognizing, and responding to
8 bullying.

9 (G) Circumstances under which bullying may be reported to a law
10 enforcement agency.

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

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

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

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

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

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

14 (f) Independent review.

15 (1) A student who desires independent review under this subsection
16 because the student is either dissatisfied with the final determination of the
17 school officials as to whether harassment or bullying occurred, or believes that
18 although a final determination was made that harassment or bullying occurred,
19 the school's response was inadequate to correct the problem, shall make such
20 request in writing to the headmaster or superintendent of schools. Upon such
21 request, the superintendent shall initiate an independent review by a neutral

1 person selected from a list developed jointly by the commissioner of education
2 and the human rights commission and maintained by the commissioner.

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

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

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

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

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

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

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

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

7 * * * Bullying; Civil Violation * * *

8 Sec. 5. 16 V.S.A. chapter 1, subchapter 10 is added to read:

9 Subchapter 10. Bullying

10 § 140e. DEFINITIONS

11 As used in this subchapter:

12 (1) "Bullying" means any overt, intentional, or reckless act or
13 combination of acts, including an act conducted by electronic means, directed
14 against a student by another student or group of students and which:

15 (A) is repeated over time;

16 (B) is intended to ridicule, humiliate, or intimidate the student or is
17 intended to have the effect of, or could reasonably be expected to have the
18 effect of, endangering the mental or physical health of the student; and

19 (C)(i) occurs during the school day on school property, on a school
20 bus, or at a school-sponsored activity, or before or after the school day on a
21 school bus or at a school-sponsored activity; or

1 (ii) at any location, regardless of whether any part of the act
2 occurs on or involves school property, if the acts have a direct and negative
3 impact on a student's academic performance or access to school services.

4 (2) "Educational institution" means a Vermont public or independent
5 school.

6 (3) "Student" means any person enrolled in or in attendance at an
7 educational institution regardless of whether the student is physically present
8 in an educational institution at the time the bullying occurs.

9 § 140f. INTERNET SAFETY PLAN

10 The department of education shall recommend a comprehensive,
11 age-appropriate curriculum that teaches Internet safety in grades kindergarten
12 through 12. At a minimum, the curriculum shall address the following topics:

13 (1) Interactions with persons in any electronic community;

14 (2) Personal safety when interacting with persons on the Internet; and

15 (3) Recognition, avoidance, and reporting of bullying that occurs by
16 electronic means.

17 § 140g. UNLAWFUL CONDUCT

18 (a) It shall be unlawful to:

19 (1) engage in bullying;

20 (2) solicit, direct, aid, attempt to aid, or abet another student engaged in
21 bullying.

1 (b) It is not a defense in an action under this subchapter that the person
2 against whom the bullying was directed consented to or acquiesced in the
3 bullying activity.

4 § 140h. CIVIL PENALTY; JUDICIAL BUREAU; WAIVER PENALTY

5 (a) A person who commits an unlawful act under this subchapter shall be
6 subject to a civil penalty of not more than \$500.00.

7 (b) Any law enforcement officer may:

8 (1) refer a person alleged to have committed an unlawful act under this
9 subchapter to an alternative resolution process; or

10 (2) issue a summons and complaint for an act of bullying, which shall be
11 heard by the judicial bureau pursuant to the procedures provided in chapter 29
12 of Title 4.

13 (c) The court administrator shall appoint a panel of judicial bureau hearing
14 officers to establish a waiver penalty for an act of bullying.

15 (d) Nothing in this section shall limit or affect the right of an educational
16 institution to enforce its own penalties against bullying.

17 § 140i. CRIMINAL PROSECUTION AND CIVIL ACTION

18 Nothing in this subchapter shall limit or preclude criminal prosecution or a
19 criminal or civil action based on any act that may constitute bullying, including
20 disorderly conduct by use of electronic means, assaults, and other crimes.

