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H.830

Representative Keenan of St. Albans City moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

(32) “Bullying” means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student ~~or group of students, teacher, administrator, any other member of school staff, and any group or combination of these individuals,~~ and that:

(A) is repeated over time;

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

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

(ii) does not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student’s right to access educational programs.

1 Sec. 2. 16 V.S.A. § 570c is amended to read:

2 § 570c. BULLYING

3 (a) Policies and plan. The bullying prevention policy required by section
4 570 of this title and its plan for implementation shall include:

5 (1) a statement that bullying, as defined in subdivision 11(a)(32) of
6 this title, is prohibited;

7 (2) a procedure that directs students, staff, parents, and guardians how
8 to report violations and file complaints;

9 (3) a procedure for investigating reports of violations and
10 complaints; The procedure shall provide that, unless special circumstances are
11 present and documented by the school officials, an investigation is initiated no
12 later than one school day from the filing of a complaint, and the investigation
13 and determination by school officials are concluded no later than five school
14 days from the filing of the complaint with a person designated to receive
15 complaints under subdivision (7) of this subsection. All internal reviews of the
16 school's initial determination, including the issuance of a final decision, shall,
17 unless special circumstances are present and documented by the school
18 officials, be completed within 30 days after the review is requested.

19 (4) a description of the circumstances under which bullying may be
20 reported to a law enforcement agency;

1 (5) ~~consequences~~Consequences and appropriate remedial action for
2 ~~students~~individuals who commit bullying;. At all stages of the investigation
3 and determination process, school officials are encouraged to make available to
4 complainants alternative dispute resolution methods, such as mediation, for
5 resolving complaints.

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

9 (7) ~~annual~~Annual designation of two or more people at each school
10 campus to receive complaints and a procedure both for publicizing the
11 availability of those people and clarifying that their designation does not
12 preclude a student from bringing a complaint to any adult in the building.

13 **(b) Independent review.**

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

1 Individuals shall be placed on the list on the basis of their objectivity,
2 knowledge of bullying issues, and relevant experience.

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

6 (3) Upon the conclusion of the review, the reviewer shall advise the
7 student and the school officials as to the sufficiency of the school's
8 investigation, its determination, the steps taken by the school to correct any
9 bullying found to have occurred, and any future steps the school should take.

10 The reviewer shall advise the student of other remedies that may be available if
11 the student remains dissatisfied and, if appropriate, may recommend mediation
12 or an alternative dispute resolution.

13 (4) If the reviewer finds that the student has been the subject of bullying
14 and that the school has not taken appropriate corrective action, then, at the
15 request of the student's parents or guardians, the school shall arrange for
16 tuition to be paid to a public school, an approved independent school, or an
17 independent school meeting education quality standards selected by the parents
18 or guardians of the student, within or outside the State. The tuition shall be
19 paid by the school district in which the student is a resident in accordance with
20 sections 823 and 824 of this title.

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

3 (6) The costs of the independent review shall be borne by the public
4 school district or independent school.

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

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

12 (9) The Secretary may adopt rules to implement this subsection.

13 Sec. 3. 16 V.S.A. chapter 9, subchapter 5, Article 4 is added to read:

14 Article 4

15 Unlawful Bullying

16 § 570m. BULLYING; NOTICE AND RESPONSE

17 (a)(1) An educational institution that receives actual notice of alleged
18 conduct that may constitute bullying shall promptly investigate to determine
19 whether bullying occurred. After receiving notice of the alleged conduct, the
20 school shall provide a copy of its bullying policy, including its bullying
21 investigation procedure, to the alleged victim and the alleged perpetrator. If

1 either the alleged victim or the alleged perpetrator is a minor, the copy of the
2 policy shall be provided to the person's parent or guardian. Nothing in this
3 section shall be construed to prohibit educational institutions from
4 investigating and imposing disciplinary consequences for misconduct upon
5 students. Elementary and secondary school officials shall strive to implement
6 the plan developed in accordance with subdivision 1161a(a)(6) of this title in
7 order to prevent misconduct from escalating to the level of bullying.

8 (2) If, after notice, the educational institution finds that the alleged
9 conduct occurred and that it constitutes bullying, the educational institution
10 shall take prompt and appropriate remedial action reasonably calculated to stop
11 the bullying.

12 (b) A civil claim may be brought alleging that the educational institution
13 was negligent in failing to protect the victim of bullying from further harm
14 after receiving actual notice of the victim being subjected to unlawful bullying
15 behavior. Such claimant may seek injunctive relief and compensatory and
16 punitive damages and any other appropriate relief in the Superior Court of the
17 county in which the violation is alleged to have occurred. However, no such
18 claim may be brought until the administrative remedies available to the
19 claimant under the policy adopted by the educational institution pursuant to
20 section 570 of this title or pursuant to the bullying policy of a postsecondary

1 school have been exhausted. Such a showing shall not be necessary where the
2 claimant demonstrates that:

3 (1) the educational institution does not maintain such a policy;

4 (2) a determination has not been rendered within the time limits
5 established under section 570c of this title;

6 (3) the health or safety of the complainant would be jeopardized
7 otherwise;

8 (4) exhaustion would be futile; or

9 (5) requiring exhaustion would subject the student to substantial and
10 imminent retaliation.

11 (c) To prevail in an action alleging unlawful bullying filed pursuant to this
12 section, the plaintiff shall prove that the student was subjected to unwelcome
13 bullying behaviors; that they were sufficiently pervasive when viewed from an
14 objective standard of a similarly situated reasonable person;and that the
15 educational institution was negligent in failing to protect the victim of bullying
16 from further harm after receiving actual notice of the victim being subjected to
17 unlawful bullying behavior.

18 (d) As used in this article:

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

1 section 570 of this title or in accordance with the bullying policy of a
2 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 may have occurred which has been provided to a designated employee from
8 another employee, the student allegedly subjected to the bullying, another
9 student, a parent or guardian, or any other individual who has reasonable cause
10 to believe the alleged conduct may have occurred. If the complaint is oral, the
11 designated employee shall promptly reduce the complaint to writing, including
12 the time, place, and nature of the conduct, and the identity of the participants
13 and complainant.

14 Sec. 4. EFFECTIVE DATE

15 This act shall take effect on July 1, 2016.

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