

Testimony of Jeff Francis, Executive Director, Vermont Superintendents Association

House Education Committee – April 24, 2018

H.27 - Draft 2.1 (An act relating to eliminating the statute of limitations on prosecutions for sexual assault)

1. Section 2 - The VSA supports the concept that there should be immunity for disclosures of “factually correct” information concerning conduct jeopardizing the safety of a vulnerable adult or minor. However, we do not support the revisions to 16 V.S.A. § 253(c) as proposed in H.27 which provide immunity only where school officials are (1) acting in good faith **and** (2) reasonably believed at the time of disclosure that the information disclosed was correct. Under this two-pronged standard, even if a person making a disclosure was acting in good faith, the disclosure could still be actionable in a civil lawsuit if the official failed to act reasonably to determine if information was accurate.

In practical terms the two-pronged standard is not workable given the turnover of administrative personnel in school districts and supervisory unions. How does a new superintendent or principal conclude that information gathered, and conclusions reached by a predecessor(s) regarding a former employee are **factually correct at the time of disclosure**? For this reason, we request that the committee remove the second prong, thereby applying a good faith standard when granting immunity. The application of a simple good faith is the appropriate standard when disclosure is mandated by the state. It is the same standard applied to mandated reporters of child abuse and neglect under 33 V.S.A. § 4913(f).

If the committee is not inclined to remove the second prong, we recommend that the committee schedule testimony from school attorneys who can better describe the problem with retaining the two-pronged standard.

2. Section 2 - 21 V.S.A § 306 has broad applicability in that it sets forth a general policy of the State of Vermont, but the proposed amendment to 16 V.S.A. § 253 is narrow in that it only addresses public and approved independent schools. Would it not be appropriate to expand the references to any employer (public and/or private) where the establishment of a

confidential employer separation agreement could jeopardize children served by that employer?

3. Section 3 calls for the establishment of a Committee for Protecting Students from Sexual Exploitation. I question whether, in this case, a Committee is the best approach. An alternative would be for the Agency of Education and the Vermont School Boards Association to confer with experts and collaborate in developing a model policy on electronic communications between school employees and students. Additionally, on the topic of “grooming behaviors” I suggest that the AOE and possibly other state agencies (Department for Children and Families; Department of State’s Attorneys; Department of Public Safety) confer with appropriate experts and respond to the questions set forth in the bill. My belief is that there is research-based information on grooming behaviors and responses to grooming behavior and that it may be a more efficient process to rely on that information rather than the work of a committee.

Thank you.

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