



VT Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
<http://hrc.vermont.gov>

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

Karen L. Richards
Executive Director
[direct line] 802-828-2482
Fax 802 828-2481
karen.richards@vermont.gov

February 13, 2018

The Honorable Maida Townsend, Chair
House Government Operations Committee
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: H. 385- An act relating to HRC jurisdiction

Dear Chair Townsend and Members of the Committee:

Thank you for the opportunity to testify on this bill. For those of you on the committee who are not familiar with the Human Rights Commission (HRC), we are the state agency charged with enforcement of Vermont's civil rights laws, outreach and education regarding human and civil rights, as well as policy development and advice to the executive, legislative and judicial branches that allows for full enjoyment by Vermonters of their civil rights.

The HRC currently has enforcement responsibility in the areas of housing, public accommodations (any place that offers goods, services, facilities or privileges to members of the general public) and state government employment. The HRC has a very small staff of five, myself, an executive staff assistant, and three investigators. On average we take in about 60-65 complaints per year for impartial investigation into allegations of discrimination based primarily on race, color, national origin, religion, sex, sexual orientation, gender identity, marital status and disability.¹ Schools are expressly covered as places of public accommodation and the HRC has jurisdiction under the Vermont Fair Housing & Public Accommodations Act to investigate cases of harassment² based on the protected statuses listed above.

¹ There are other covered "classes" in employment and housing, not relevant to this discussion.

² Harassment is defined in 16 V.S.A. Sec. 11(26)(A) as an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment. Add definition of harassment

School districts are also required under current law to promptly investigate allegations of both bullying and harassment. The requirements for the investigation are the same for each. The remedies, however, are different. In cases of harassment, if a parent is not satisfied with the outcome of the school's investigation they have two options. They can ask for an independent review or contact the HRC.³ Independent reviews are conducted by trained individuals who review and provide input to the school district about whether they agree with the district's conclusion as well as provide any advice or recommendations regarding improvements to the district's procedures, etc. The independent review is advisory only; the reviewer cannot force the district to take any particular action, though in most instances, I believe the districts follow any recommendations. If parents are still not satisfied they have an additional legal remedy through a complaint the HRC.⁴

Parents who are dissatisfied with the outcome of the district's investigation into bullying, on the other hand, presently have no additional remedies. This bill, H. 385, would expand the HRC's jurisdiction to provide a legal remedy in bullying cases. As of 2011, only 39% of the states offered a legal remedy for bullying and in some cases, that remedy is to criminalize the certain behaviors. Other states offer similar remedies for both bullying and harassment.

Bullying is defined as "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 and which (A) is repeated over time and (B) is intended to ridicule, humiliate, or intimidate the student...".

Any behaviors covered by this definition that are related to any of the protected statuses mentioned above, would in most circumstances state a case of harassment rather than bullying which would already be within the HRC's jurisdiction. Examples of bullying not presently within our jurisdiction include behaviors directed at students because of socioeconomic status, weight, wearing braces or glasses, etc. The HRC receives, on average, 20 calls per year about bullying and I suspect this is just the tip of the iceberg.

There is no doubt in my mind, based on the number of calls that we receive from frustrated parents, that bullying continues to be a serious problem in our schools and that more needs to be done to address it. This raises the question of whether creating an additional legal remedy through the HRC is

³ Parents are under no obligation to exhaust their remedies with the school district prior to filing a complaint with the HRC but because the district processes are much quicker, we encourage parents to do so before filing a complaint with our office.

⁴ Federal laws including Title VI (which covers race, national origin and religion), Title IX (which covers sex, sexual orientation and gender identity- that latter two with some degree of controversy) and Sec. 504 of the Rehabilitation Act of 1973 (disability) provide legal remedies for students subjected to harassment as well.

the most appropriate means of addressing the problem or whether there is a better, more practical solution.

My first concern with adding bullying to the HRC's jurisdiction is that there are presently no federal laws that provide a legal remedy for bullying and thus there is no caselaw to provide a legal analysis of bullying cases. Adding bullying would also, at a minimum, increase our caseload by about one third based on the current call volume. We do not have the capacity to absorb that many cases without additional resources, likely another full-time investigator. Third, because we conduct thorough investigations and each investigator has 10 or more pending cases at any given time, the cases take time to resolve. By time, I mean months, sometimes close to a year. Months in the life of a student who is experiencing bullying is too long. Finally, adding bullying would expand HRC jurisdiction out of the realm of traditional "protected status" creating a slippery slope that could unintentionally diminish the HRC's civil rights focus.

My suggestion is to amend Title 16 to allow parents who are not satisfied with a district's bullying investigation the option of an independent review. This has the benefit of a faster, more efficient process that districts are already familiar with and it has the potential to resolve these matters without creating an additional legal remedy. Will districts like this idea? Probably not as they bear the cost of these reviews. But ultimately, complaints to the HRC would take far more of their time and resources and most districts end up hiring legal counsel to manage the investigations. The HRC process is, at the end of the day, a far more complicated and costly process that does not serve the children who have allegedly been bullied or the districts well.

For these reasons, it is my recommendation that the Legislature explore adding independent reviews for bullying to Vermont law. Thank you for the opportunity to discuss this important issue with you. I welcome any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen", with a long horizontal flourish extending to the right.

Karen L. Richards
Executive Director and Legal Counsel