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The Honorable Philip Baruth, Chair
Senate Education Committee
Vermont General Assembly
State Street
Montpelier, Vermont

RE: S. 18- An Act Related Freedom of Expression for Students

Dear Senator Baruth and Members of the Committee:

Thank you for the opportunity to address the Committee with regard to the above bill.

The Vermont Human Rights Commission supports the general concept of this statute. We are concerned, however, that S.18 as it is currently drafted does not adequately address the concerns of students who are or may be subjected to bullying, harassment and/or hazing by their peers.

Because bullying, harassment and hazing is often conducted through media that is expedient and far-reaching, the freedom of students to express themselves should be weighed against the necessity to protect those students who are most vulnerable to bullying, harassment and hazing such as students with disabilities, LGBTQ students, ethnic and racial minorities, Muslim students, etc.

The Human Rights Commission has jurisdiction to investigate complaints of harassment when a parent or guardian is dissatisfied with the school district or supervisory union's investigation or response to alleged harassment. While the bill provides for specific exceptions in §1623(4)(d)(1)-(4) (including violations of federal or state laws), VHRC feels strongly that bullying, hazing and harassment should be specifically enumerated so that it is very clear that this does not constitute protected speech.

This change would address our second concern--- that S.18 in its current iteration is not explicit about the ability to use prior restraint to prevent distribution of content that would violate a student's right to an environment free from bullying, harassment and hazing. If the above section is amended to specifically include bullying, harassment and hazing, it would be clear that such content can be restrained.

Third, subsection (4)(f) could be more clear as the language, "acting in accordance with this section" is a bit vague. We assume that it means that the content does not fall within the exceptions in subsection (4)(d) but that could be made more explicit.

Finally and most concerning, subsection (4)(i) removes a school district's liability for student expression with no exceptions thus providing immunity to schools that would be in direct conflict with the VHRC's statutory authority to hold a school liable for school-sponsored media expression that would violate the anti-harassment provisions of Title 16 enforced by the VHRC.

Therefore, the Vermont Human Rights Commission makes a recommendation that the following changes be made to S.18:

ADD TO SUBSECTION (d) a subsection (5)(Page 3, Lines 4-11):

(5) violates the school's adopted policy on Bullying, Harassment and Hazing.

ADD TO END OF SUBSECTION (4)(f)(Page 3, Line 18):

A student journalist may not be disciplined for acting in accordance with this section unless there is a determination by the principal, school board or supervisory union that the school-sponsored media violated Subsection (d) of this statute and the violation was the result of the acts and/or omissions of the student journalist.

ADD TO END OF SUBSECTION (4)(i) (page 4, Line 11):

No section of this statute shall be construed to remove or release any school, the governing body of any school, official, employee, agent of any school or its governing body from civil or criminal liability if the school-sponsored media violates subsection (d) of this statute.

Thank you again for opportunity to provide input on this important issue.

Sincerely,



Karen L. Richards
Executive Director