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Testimony on H.3: An act relating to ethnic and social equity studies standards for public schools

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Summary of Position

The Vermont Agency of Education supports the intent of H.3 to create more inclusive school experiences in Vermont. This is a goal widely shared by educators and policymakers at every level of Vermont education. In that spirit, we offer the following suggestions for improving the bill:

- *The General Assembly should avoid creating new responsibilities for the agency that will only result in a product that cannot be reported publicly. Federal student privacy laws will prevent many of the reports envisioned by the bill from being useful.*
- *The General Assembly should not direct the agency to collect sensitive information from students that would pose significant ethical concerns for student privacy and data collection.*
- *If the General Assembly proceeds with the bill as drafted, it should commit adequate resources to the agency to allow it to change existing vertical reporting data collection infrastructure and support increased data analysis demands. This bill will also likely present significant IT and data collection costs to Supervisory Districts/Unions as well as our partners at the Agency of Digital Services.*

In addition to the suggestions above, we offer a friendly markup of the House Passed language given in the interest of maintaining statutory consistency.

Suggested Improvements and Additions

There are however, several significant implications of certain sections of this bill, specifically in the areas of data collection, student privacy and capacity at the AOE and in school districts.

We understand that one of the goals of the bill is to ensure the state has good data on the outcomes and experiences of student groups defined in section 1. Specifically, section 2 amends current data requirements. It directs the agency to disaggregate two indicators by a number of student groups: 1) student performance and 2) incidents of harassment, hazing and bullying.

The agency supports the goals of providing useful data to policymakers, and offers the following suggestions and alternate policy approaches for consideration:

1) The General Assembly should avoid creating new responsibilities for the agency that will only result in a product that cannot be reported publicly. Federal student privacy laws will prevent many of the reports envisioned by the bill from being useful.

The Vermont Agency of Education collects information on student performance disaggregated by the following groups: disability, poverty, English Language Learner status, race and gender. The agency collects information about reported [harassment, hazing and bullying \(HHB\)](#). When incidents of harassment (as opposed to bullying or hazing) are reported, these are, by definition,

reports of conduct directed against a member of a protected class (i.e. race, color, religion, creed, national origin, marital status, sex, sexual orientation, gender identity or disability).

The agency reports the information described above, but our reporting ability is limited by federal student privacy law (FERPA). Numbers that would reveal personal information about a student may not be reported or made public. This includes the number standing alone and in combination with other publicly-available data. An “n-size” of 11 is the cutoff for reporting in Vermont. Reporting data with totals smaller than 11 would cause the agency to violate federal law, so we suppress these data in reports. When the agency publishes a report that will include data cells of 11 or smaller, we use an asterisk for that cell. Cells that would contain a “0” are also reported as asterisks, because zero is a number smaller than 11.

Vermont’s very small student population results in a limited ability to publish reports in the same way larger states can. This is unavoidable *unless and until* we see a dramatic rise in student population. Even if federal law changed, the agency would still take ethical and responsible steps to protect student privacy, and we trust the General Assembly would support those efforts.

It is helpful to acknowledge that there is a tension between ensuring privacy and providing information:

- In practical terms, when the desired report would examine a smaller population of students, for instance a supervisory union, the universe of reportable data is correspondingly smaller. A report on a particular student group, which is by definition a smaller number than the total students in the given population, is generally going to result in numbers below 11, meaning that the data will be reported as an asterisk.
- The use of statewide data is one good strategy to avoid these suppression issues. Certain questions, however, will still result in suppressed data. The small enrollment numbers of many Vermont schools and even smaller numbers of incidents of hazing, harassment, and bullying associated with the protected classes listed above will mean that in many, if not all cases, the data will be suppressed to protect student privacy
- Even at the SD/SU level or statewide, some, if not all, categories of student data would be suppressed
- Suppressed data will have little value for the purposes of achieving the goals of this section as amended by H.3

Suggestion for Alternate Policy Approach:

Use the YRBS (Youth Risk Behavior Survey), the annual HHB Report, and the ESSA State Report Card to monitor outcomes for students.

The YRBS provides data on experience of bullying behaviors disaggregated by race, sexual orientation and gender identity. Each year, the agency is required by current law to report the number of harassment, bullying and hazing incidents reported in schools. The ESSA State Report Card provides data on the performance of historically marginalized groups across several measures, including standardized tests.

These three data sets provide the General Assembly and the public with useful information that can guide future policy discussions.

2) The General Assembly should not direct the agency to collect sensitive information from students that would pose significant ethical concerns for student privacy and data collection.

Section 2 directs the agency to add three identifiers to the data collection we currently conduct. These identifiers are *religious group affiliation*, *sexual orientation* and *gender identity*. These categories of personal information above are not currently collected, and if collected, would pose serious implications for student privacy in both data collection and student records management.

First, collection of these data by school districts would be extremely invasive. Requests for this information from students, who are minor children, by an authority figure, regardless of how sensitively handled, could negatively impact LGBTQIA students and students who are members of a religious minority, particularly if these students are already grappling with issues of identity and expression.

If the General Assembly is determined to require this collection, training is needed. Prior to requiring that school staff pose these questions to minors and/or vulnerable youth, we would recommend that our educators are provided the opportunity to engage in professional learning to support responsible interviewing and student engagement practices.

The Agency of Education considers academic research best practices and the impacts of new data collections. During the 60th session of the United Nations Commission on the Status of Women in March of 2016, Andrew Park presented on data collection methods for sexual orientation and gender identity. During that discussion he made several recommendations; two of which are relevant to this topic:

- “Government and researchers should, at all times, consider any safety consequences of research and efforts.”
- “Government and researchers should, at all times, observe ethical standards and other standards related to research with human subjects.”

Additionally, the Equity Project of Indiana University – a “consortium of projects dedicated to providing high quality data to educational decision-makers in order to better understand and address issues regarding educational equity...” – not only recognizes that asking students to self-report gender identity and sexual orientation poses significant privacy concerns but also, has used *anonymous* surveys when making recommendations to link school discipline issues and gender identity and sexual orientation.

The General Assembly should deliberately weigh the implications of collecting such data in terms of creating lists of private and personal identity data, risk of government overreach and invasion of privacy against the potential usefulness of such data.

Resource and Administrative Considerations

If the General Assembly chooses to proceed with the bill as currently drafted, the General Assembly should commit adequate resources to the agency to allow it to:

- a) change existing vertical reporting data collection infrastructure and
- b) support increased data analysis demands presented by this work.

Changes in this bill will also likely present significant IT and data collection costs to Supervisory Districts/Unions as well as our partners (in data collection) at the Agency of Digital Services.

To the extent you conclude the need for this collection outweighs the risks, the General Assembly should thoroughly examine other state-level collections of this type of individual student information and invest in the requisite personnel and data infrastructure at the AOE to responsibly serve all of our students.

If the agency is ultimately to collect this additional data, it will present a significant collection and analysis burden on the agency and SD/SUs. In addition, supporting effective operation of the Working Groups will place additional responsibilities on the AOE:

- *As currently drafted*, H.3 places significant additional data processing and analysis burdens on the agency. In order to comply with this requirement and ensure that sensitive student data is protected, the agency recommends the addition of:
 - 2 FTE for analysts in the Data Management and Analysis Division.
- The agency does not currently have a position that coordinates the school climate, counseling, and advisory components of the bill as drafted. In order to successfully implement these requirements by schools and at the agency, the agency recommends the addition of:
 - 1 FTE for a School Counseling Coordinator in Student Pathways.
- The agency does not currently have a position to assist SDs/SUs/schools in attracting, retaining and training existing personnel (e.g., critical race theory in education, ethnic studies standards integration, teacher preparation and inclusive practices, etc.). In order to adequately support the Working Group and the field in this work, the agency recommends the addition of:
 - 1 FTE for a Diversity and Inclusion Coordinator

Properly supporting the work of this bill will require 4 additional positions. These positions should be funded at an average of **\$125,000** per FTE for a total additional appropriation of **\$500,000 in FY2020**.

In addition to the staffing resource needs outlined above, additional resources will be needed for the following items:

- AOE-assigned ADS services to administer data collection. Adjustments of the system could range above \$25,000 in contracted services or an unknown number/fraction of FTE to conduct the work.
- A new buildout of the SLDS vertical reporting system will be necessary, with significant related costs. It is also unclear if contractual changes can be made at this stage of the implementation.

Finally, additional requirements will be placed on SD/SUs in order to comply with the bill as drafted.

- Additional data collection burdens will be placed on SD/SUs.

- SD/SUs will need to update / replace IT reporting software to accommodate such changes. It is unclear if updates or changes will be possible with school IT and data collection vendors. This would present potentially significant costs to districts as they would have to contract with their SIS vendors to pay for such changes to be implemented and then pay for the changes associated with making the needed adjustments to the functionality currently being built to support current Vertical Reporting processes for SLDS.

As yet, the AOE has been unable to fully estimate the fiscal impact on school districts.

In summary, for the bill as currently drafted, a conservative estimate of \$525,000 in additional appropriations will be necessary to allow AOE to support this work, with an unknown additional cost dependent on contractual obligations for our Vertical Reporting system.

Additional Policy Approach Not Addressed by H.3 As Passed by the House

We would propose an additional focus on the third recommendation of the Attorney General and Human Rights Commission Task Force on Act 54 report: "...increase the representation of People of Color in the state and school labor forces by focusing on recruitment, hiring and retention, as well as promotion of People of Color into positions of authority and responsibility on boards, commissions, etc."

There is a wealth of research that suggests students of color perform better on assessments, have better attendance and fewer discipline reports when they have at least one teacher of color. Additionally, research has found that college completion rate disparities between white and non-white peers has a significant impact on the diversity of our teaching force, and that young, non-white teachers have a significantly higher rate of entering the teaching profession through alternative means. Finally, teacher and leader effectiveness has the greatest impact on student performance and achievement – particularly on historically marginalized student groups.

In response to this research, we conclude that as a state, we could have the greatest impact on advancing educational equity by:

- Improving our teacher preparatory programs so that teachers new to the profession enter the classroom ready to provide high-quality and inclusive educational experiences
- Working with our higher education partners to actively recruit and retain students from historically marginalized groups into teacher preparatory programs
- Improving on existing alternative pathways to teacher licensure and investigating other strategies other state education agencies have explored
- And promoting the practice of having our most effective and experienced teachers working with our most vulnerable student populations.

We would recommend that this body review the considerable overlaps with components of this proposed bill as it pertains to professional learning, standards review/adoption, and reporting timelines and those detailed in Act 173. Given the scope and scale of the changes Act 173 represents, as well as the significant importance and implications of this work, opportunities for synergy, efficiency and reduction of duplicative efforts should be actively encouraged.