

Supplemental Testimony of VSBIT, VSBA, VSA, and VPA re: H.329

Contact: Sue Ceglowski, Vermont School Boards Association

House Committee on Judiciary—March 10, 2022

House Committee on General, Housing and Military Affairs—March 10, 2022

We appreciate your attention to the concerns our organizations outlined regarding the effects of House Bill 329 on schools responding to student-student harassment. Please see our written testimony of March 9, 2022, for a summary of those issues.

You have asked whether there is a proposed solution to the concerns outlined in the written testimony our organizations submitted to the House Committee on Judiciary on March 9, 2022, short of abandoning the bill.

Because H.329 no longer proposes to amend the definition of harassment used in Title 16, we believe that explicitly incorporating the Title 16 definition and exhaustion requirements into the Vermont Public Accommodations Act (“VPAA”) by reference—only as pertains to schools as a class of public accommodation—would address the issues we raised. To that end, we suggest that the following language be added to the amendments currently proposed to 9 V.S.A. § 4501:

(12)(D) No provision of this section (12) shall be construed to apply to schools as places of public accommodation. As applied to schools as places of public accommodation, unlawful harassment shall have the meaning set forth at 16 V.S.A. § 570f(c).

(i) A school’s responsibilities under this chapter in responding to actual notice of alleged conduct that may constitute harassment shall in every case be consistent with those imposed by 16 V.S.A. § 570f(c).

(ii) A claim may be brought against a school pursuant to this chapter only after the administrative remedies available to the claimant under the policy adopted by the educational institution pursuant to subsection 166(e) or section 570 of Title 16 or pursuant to the harassment policy of a postsecondary school have been exhausted. Such a showing shall not be necessary where the claimant demonstrates that:

- (a) the educational institution does not maintain such a policy;
- (b) a determination has not been rendered within the time limits established under section 570a of this title;
- (c) the health or safety of the complainant would be jeopardized otherwise;
- (d) exhaustion would be futile; or
- (e) requiring exhaustion would subject the student to substantial and imminent retaliation.