

TO: House Education Committee
FROM: Jeff Fannon, Vermont-NEA Executive Director
DATE: May 3, 2023
RE: S.103 – School Liability for Instances of Harassment

Thank you for inviting me to testify to you about S.103, specifically the matters pertaining to Title 16 about harassment by and between students. I will start my discussion focusing my attention on matters from more than a decade ago.

In 2012, Vermont passed into law Act 129, which created the Hazing, Harassment, and Bullying Advisory Council, on which I have sat since the Council's first meeting in August 2012. That Council advised the Secretary to "review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying," and report annually to the House and Senate Education Committees.

The Council was chaired by Human Rights Commission investigator Tracey Tsugawa. Moreover, the Advisory Council had three sub-groups—a training subgroup that I led, a data subgroup led by Mill Moore from the Independent Schools Association, and a student leadership subgroup led by then high school student Justin Lambert. What my training subgroup learned was that the Human Rights Commission's Tracey Tsugawa was conducting professional development in schools when there was a request, which was typically made after a complaint of harassment was filed. Understanding that Tracey's good work was reactionary, the training subgroup initiated a training regimen for school bus drivers that was done in advance of any complaint, i.e., it was prophylactic. We also recommended all school bus contracts with private contractors include harassment training for all drivers.

Because the training work was labor-intensive and the entire council was and remains essentially voluntary, I do not believe these trainings have continued in any form, and I don't think the Human Rights Commission is doing any trainings, even if asked. This is not a criticism of anyone on the Council, instead it is a request for resources to ensure that harassment stops for all students. Without resources dedicated to this work, it will always be pushed aside for the newer more pressing issue, which we saw very dramatically in the pandemic. Without resources, schools cannot sustain the necessary anti-harassment trainings the Council saw as invaluable and critical to eliminating harassment.

Let me be crystal clear: **Vermont-NEA wants harassment to end, Vermont-NEA wants harassment to end after a single instance, and in order for these two things to happen Vermont-NEA believes schools must be given the resources to train staff and students and investigate allegations of harassment after the fact.** They cannot and should not be bifurcated. We've seen what that separation has done for more than a decade, which is to say harassment continues, and the necessary change must be the allocation of sufficient resources to address the harm done by harassment.

A review of existing law shows we have a solid law in place. *See* 16 VSA § 11(a)(26).

(A) “Harassment” means 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.

(B) “Harassment” includes conduct that violates subdivision (A) of this subdivision (26) and constitutes one or more of the following:

(i) Sexual harassment, which means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

(I) Submission to that conduct is made either explicitly or implicitly a term or condition of a student’s education.

(II) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

(ii) Racial harassment, which means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to racial customs.

(iii) Harassment of members of other protected categories, which means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived creed, national origin, marital status, sex, sexual orientation, gender identity, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

Again, what schools lack are resources to do the job we asked them to do—stop all harassment.

As amended by the House General Committee, S.103 would add a new subsection (C)(i) through (iv) that, among other things, makes clear that harassment “need not be severe or pervasive . . .” to be actionable by a school or a court. We agree with that change, but it must be accompanied with resources to make good on the state’s promise of a harassment-free education for all.

To accomplish this goal, Vermont-NEA recommends three additions to the bill.

1. Resources **MUST** be made available to schools to employ a person to coordinate this anti-harassment work. Vermont schools, therefore, should be required to employ at least one school harassment coordinator who shall train students, staff, investigate harassment complaints, and coordinate the school’s work with the Human Rights Commission’s training.

To make resources available S.103 should be amended by adding a new Section 7 as follows:

16 VSA § 4001 shall be amended by adding a new subsection, 4001(6)(B)(xii)
For purposes of calculating excess spending pursuant to 32 VSA § 5401(12), “education
spending shall not include: . . .

(xii) Costs incurred by a school district or supervisory union that fulfills the
requirement that it hire at least one school harassment coordinator.

2. The Human Rights Commission should be given resources to re-start its statewide anti-harassment trainings and to coordinate the statewide approach to this statewide priority.
3. Because penalties for harassment are so variable, the bill should require a study, led by affected parties, to determine appropriate penalties. Without such state level guidance schools will be left to their own devices creating inequities for students, which is counter to the goal of making harassment a statewide priority.

Thank you for your consideration of Vermont-NEA’s position on this important statewide priority.