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West's Vermont Statutes Annotated [Currentness](#)

Title Sixteen. Education

Part 1. Administration

↖ [Chapter 9. School Districts](#)

↖ [Subchapter 4. Other Provisions](#)

→ **§ 565. Harassment and hazing prevention policies**

(a) It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont **schools**. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont **school**.

(b) Each **school** board shall develop, adopt, ensure the enforcement of, and make available in the manner described under subdivision 563(1) of this title harassment and hazing prevention policies which shall be at least as stringent as model policies developed by the commissioner. In this section, the definitions of educational institution, organization, pledging, and student shall be the same as those in [section 140a](#) of this title.

(1) The harassment prevention policy shall include:

(A) A statement prohibiting harassment of a student.

(B) The definition of harassment pursuant to subdivision 11(a)(26) of this title.

(C) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, **school** officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

(D) A procedure that directs students and staff how to report violations and file complaints.

(E) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the **school** officials, an investigation is initiated no later than one **school** day from the filing of a complaint and the investigation and determination by **school** officials are concluded no later than five **school** days from the filing of the complaint with a person designated to receive complaints under subdivision (c)(1) of this section. All internal reviews of the **school's** initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the **school** officials, be completed within 30 days after the review is reques-

ted.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to harassment.

(2) The hazing prevention policy shall include:

(A) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited.

(B) A procedure that directs students and staff how to report violations and file complaints.

(C) A procedure for investigating reports of violations and complaints.

(D) Circumstances under which hazing may be reported to a law enforcement agency.

(E) Appropriate penalties or sanctions, or both, for organizations which or individuals who engage in hazing, and revocation or suspension of an organization's permission to operate or exist within the institution's purview, if that organization knowingly permits, authorizes, or condones hazing.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to hazing.

(c) Each **school** district shall establish rules setting forth procedures for dealing with harassment and hazing of students which include:

(1) Annual designation of two or more people within the institution to receive complaints and a procedure for publicizing those people's availability.

(2) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(3) A statement that acts of retaliation for reporting of harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9.

(d) Annually, prior to the commencement of curricular and cocurricular activities, the **school** board shall provide notice of the policy and procedures developed under this section to students, custodial parents or guardians of students, and staff members. Notice to students shall be in age-appropriate language and should include ex-

amples of harassment and hazing. At a minimum, this notice shall appear in any publication of the **school** district that sets forth the comprehensive rules, procedures and standards of conduct for the **school**. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students about the substance of the policy and procedures in order to help prevent harassment, and hazing.

(e) The commissioner shall develop and, from time to time, update model harassment and hazing prevention policies.

(f) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the **school** officials as to whether harassment occurred, or believes that although a final determination was made that harassment occurred, the **school's** response was inadequate to correct the problem, shall make such request in writing to the headmaster or superintendent of **schools**. Upon such request, the superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant **school** officials and review of written materials involving the complaint maintained by the **school** or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the **school** officials as to the sufficiency of the **school's** investigation, its determination, the steps taken by the **school** to correct any harassment found to have occurred, and any future steps the **school** should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the **school** for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the independent **school** or **school** board.

(6) Nothing in this subsection shall prohibit the **school** district from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

CREDIT(S)

1993, Adj. Sess., No. 162, § 4; 1999, Adj. Sess., No. 120, § 6; 2001, No. 8, § 6; 2003, Adj. Sess., No. 91, § 4.

HISTORICAL AND STATUTORY NOTES

1999, Adj. Sess., No. 120, § 11, provides:

“Sec. 11. Effective Dates

“(a) On or before January 1, 2001, the commissioner of education shall develop and disseminate to **school** districts, model harassment and hazing prevention policies and procedures.

“(b) On or before August 1, 2001, each **school** district board shall adopt revised harassment prevention policies if necessary, to come into compliance with the model policy adopted by the commissioner. On or before August 1, 2001, each **school** district board shall adopt hazing prevention policies at least as stringent as the model policy adopted by the commissioner.”

1999, Adj. Sess., No. 120, was approved May 19, 2000.

2007, No. 41, § 21, provides:

“Sec. 21. Student harassment prevention policies

“(a) The commissioner of education shall revise the model policy on prevention of harassment of students to reference the term “**gender identity**” and to provide the revised model policy to each **school** board in Vermont on or before August 1, 2007.

“(b) Notwithstanding 16 V.S.A. § 565(b) that requires each **school** board to adopt harassment prevention policies that are “at least as stringent as model policies developed by the commissioner,” **school** boards are not required to amend harassment prevention policies to reference the term “**gender identity**” until August 1, 2009.”

LAW REVIEW AND JOURNAL COMMENTARIES

“You're so gay!": Anti-gay harassment in Vermont public **schools**. Daniel Greene, 27 Vt. L. Rev. 919 (Summer 2003).

LIBRARY REFERENCES

[Schools](#) 169.

Westlaw Key Number Search: 345k169.

[C.J.S. Schools and School Districts §§ 789 to 791](#).

NOTES OF DECISIONS

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[1. Construction with other laws](#)

Deliberate indifference standard applicable to student claims of harassment brought under Title IX does not apply to such claims brought under state Public Accommodations Act. Education Amendments of 1972, § 901(a), [20 U.S.C.A. § 1681\(a\)](#); [9 V.S.A. §§ 4501\(1\), 4502\(a\), 4506\(a\)](#); [16 V.S.A. §§ 11\(a\)\(26\), 14, 565](#). [Washington v. Pierce, 2005, 895 A.2d 173, 179 Vt. 318. Civil Rights 1064; Civil Rights 1067\(3\)](#)

[2. Nature and elements of claim](#)

A plaintiff bringing a Public Accommodations Act action based on a hostile **school** environment created by student-student harassment must show that: (1) he or she was the victim of harassing conduct so severe, pervasive, and objectively offensive that it deprived him or her of access to the educational opportunities or benefits provided by the **school**; and (2) the plaintiff exhausted the administrative remedies available, or that circumstances existed that relieved the plaintiff of the exhaustion requirement. [9 V.S.A. §§ 4501\(1\), 4502\(a\), 4506\(a\)](#); [16 V.S.A. §§ 11\(a\)\(26\), 14, 565](#). [Washington v. Pierce, 2005, 895 A.2d 173, 179 Vt. 318. Civil Rights 1064; Civil Rights 1716](#)

[3. Exhaustion of administrative remedies](#)

Former student who brought Public Accommodations Act claim based on a hostile **school** environment created by student-student harassment failed to demonstrate that she exhausted her administrative remedies at the **school**, precluding her recovery unless one of the exceptions to the exhaustion requirement applied; student did not lodge any complaints with the **school** administration regarding harassing conduct by other students, student presented no evidence that any misconduct occurred in the presence of **school** personnel, and there was no identifiable link between complaint made by another student and the conduct of which student complained. [9 V.S.A. §§ 4501\(1\), 4502\(a\), 4506\(a\)](#); [16 V.S.A. §§ 11\(a\)\(26\), 14, 565](#). [Washington v. Pierce, 2005, 895 A.2d 173, 179 Vt. 318. Civil Rights 1716](#)

Former student who brought Public Accommodations Act claim based on a hostile **school** environment created by student-student harassment, without exhausting her administrative remedies, failed to demonstrate that any of the exceptions to exhaustion requirement applied, precluding her recovery; record was devoid of any evidence suggesting that complaining to **school** officials would have placed student's health or safety in jeopardy or sub-

jected student to retaliation, given that student chose not to raise any complaint with **school** officials, there was no possibility of **school** failing to make a determination within the statutory time limits, fact that student chose not to complain to **school** officials because she believed education was a better policy than punishment did not indicate that lodging a complaint would have been futile, and **school** maintained required harassment policy. 9 V.S.A. §§ 4501(1), 4502(a), 4506(a); 16 V.S.A. §§ 11(a)(26), 14, 565. *Washington v. Pierce*, 2005, 895 A.2d 173, 179 Vt. 318. [Civil Rights 1716](#)

School sufficiently complied with obligation under anti-harassment educational statute to maintain a harassment policy, for purposes of determining if student who brought Public Accommodations Act (PAA) claim based on a hostile **school** environment created by student-student harassment was relieved of her responsibility to exhaust her administrative remedies, even though policy's statement concerning retaliation did not mention the PAA, it was not clear that **school** adopted procedures for reporting harassment or for publicizing the government agencies available to field complaints; policy clearly stated that retaliation was prohibited, policy made clear that **school** as an institution stood ready to receive even informal, oral reports of harassment and act upon them, and student chose not to report alleged harassment to **school** officials. 9 V.S.A. §§ 4501(1), 4502(a), 4506(a); 16 V.S.A. §§ 11(a)(26), 14, 565. *Washington v. Pierce*, 2005, 895 A.2d 173, 179 Vt. 318. [Civil Rights 1064](#); [Civil Rights 1716](#)

4. Parties

Public Accommodations Act encompasses claims against **school** officials, as owners and operators of places of public accommodation, as well as their agents and employees, for unlawful in-**school** harassment of their students, even when the harassing conduct is perpetrated by other students. 9 V.S.A. §§ 4501(1), 4502(a), 4506(a); 16 V.S.A. §§ 11(a)(26), 14, 565. *Washington v. Pierce*, 2005, 895 A.2d 173, 179 Vt. 318. [Civil Rights 1064](#); [Civil Rights 1737](#)

16 V.S.A. § 565, VT ST T. 16 § 565

Current through First Session of the 2009-2010 Vermont General Assembly (2009) and the 2009 Special Session. See Scope for further information.

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