

# *The Legal Rights of Women in Vermont*

## **Education**

### **Chapter 4**

This chapter includes information about:

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Women need to be aware of their rights and their children's rights regarding discrimination, harassment, bullying, hazing, the rights of students with disabilities as well as the rights of pregnant and parenting students in schools and other educational institutions. It is the policy of the State of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

## **Discrimination, Harassment, Hazing and Bullying**

### **Discrimination**

Students have the right to an education in an environment that is free from discrimination. **Under the federal law, Title IX of the Education Amendments of 1972, discrimination on the basis of sex is prohibited.** Title IX (Title nine) applies to all educational programs or activities that receive federal assistance, regardless of which part of the program or activity receives the federal assistance. Title IX also prohibits stereotyped or sex-biased athletics, course assignments and student counseling. The United States Supreme Court has also held that students cannot be discriminated against on the basis of gender under the 14<sup>th</sup> Amendment to the Constitution. This can include sex segregation in schools and classrooms.

Vermont law also prohibits sex discrimination in schools. This can be found in the public accommodations provisions of Vermont's Fair Housing and Public Accommodations Act. The definition of "a place of public accommodation" is written to specifically include "schools." **In addition to sex discrimination, Vermont law also prohibits discrimination against students on the basis of their race, color, religion, national origin, marital status, sexual orientation, gender identity, and disability.**

One of the few exceptions to the laws against sex discrimination in schools is for **single-sex sports teams**, but this usually applies only if there are equal opportunities for girls

and boys to play the same sport. For example, if there is a boys' soccer team and a girls' soccer team, they can be separated by sex. If there is only one soccer team at the school generally, it must be open to both girls and boys.

If you believe a student or school employee or representative has engaged in discriminatory behavior towards you or your child, first contact your local school district. If your local school district fails to remedy the situation, you may contact the Vermont Human Rights Commission or the U.S. Department of Education, Office of Civil Rights. The Vermont Partnership for Fairness and Diversity also helps victims, families and communities address issues of harassment and discrimination. ([See VCW's Resource Directory - Education section.](#))

## **Harassment**

Vermont's anti-harassment laws make it clear that **harassment of students on the basis of race, color, religion, national origin, marital status, sex, sexual orientation, gender identity or disability is unlawful.** It is possible that a student could suffer unlawful harassment by a teacher, administrator, school staff person, school bus driver, school contractor or another student.

Harassment means one or more 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 interfering with a student's educational performance or access to school resources or creating an intimidating, hostile, or offensive environment.**

Harassment of any type 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.

## **Types of Harassment**

### **Sexual Harassment**

**Sexual harassment means conduct that includes unwelcome sexual advances, requests for sexual favors, or other verbal, written, visual or physical conduct of a sexual nature.**

Additionally, one of two conditions must be present:

- submission to that conduct is made either explicitly or implicitly a term or condition of a student's education; (For example, when a teacher promises a higher grade in exchange for the performance of sexual favors) **or**

- submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student. (For example, when a student is rejected for a particular sports team because she has refused the sexual advances of the coach.)

## **Racial Harassment**

Racial harassment is conduct that is directed at the characteristics of a student's or a student's family member's **actual or perceived** race or color.

Just as sexual harassment and discrimination of students is prohibited under Title IX of the federal law, harassment and discrimination on the basis of race, color and national origin is prohibited under federal Title VI of the Civil Rights Act of 1964. In 1994 the Office of Civil Rights for the U.S. Department of Education issued guidelines regarding how to appropriately recognize and deal with harassment of students based on race, color and national origin.

## **Other Forms of Harassment**

Harassment that is not of sexual or racial nature is still prohibited. Other types of harassment include 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.

Furthermore, harassment and discrimination of students on the basis of their disability is also prohibited under Section 504 of the federal Rehabilitation Act of 1973 and the Americans With Disabilities Act, Title III.

## **Hazing**

Since 2000, "hazing" of students is against Vermont law and is subject to both civil and criminal penalties. **Hazing is committed when a student is subjected to some act in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with an educational institution if the act has the purpose or effect of endangering the mental or physical health of a student.** Endangering of mental or physical health can be humiliating, intimidating or demeaning the student. Hazing acts include soliciting, directing, aiding, failing to take reasonable measures to prevent or otherwise participating actively or passively in the above acts. The hazing acts are illegal even if the student consents.

Vermont law requires that each school board develop a policy to prevent hazing.

## Addressing Discrimination, Harassment and Bullying

**Educational institutions in Vermont are required to have harassment, bullying and hazing prevention policies. This includes public school and approved or recognized independent schools. Universities or post-secondary schools are required to have harassment and hazing prevention policies.** You should receive a copy of the school's policy annually before the start of curricular and co-curricular activities for the year. A copy of the school's prevention policies is frequently included in the parent/student handbook. The school's policy should identify by name the individuals at your child's school who are designated to receive complaints.

### **What to do if you or your child has been harassed:**

Vermont law requires school harassment prevention policies to include a procedure that directs students, staff, parents and guardians how to report violations and file complaints. Once the school is notified of the misconduct, they are required to promptly investigate to determine if harassment occurred. The school is required to give both the alleged victim and alleged perpetrator (or to their parents or guardians, if minors) a copy of the discrimination policy. The school or university may impose disciplinary consequences upon students for misconduct.

### **If the harassment is directed at a student:**

- 1. Follow the school's procedure to file a complaint.** School officials are required to investigate the complaint. School officials may make alternative dispute resolutions methods, such as mediation
- 2. Request an independent review.** If you are dissatisfied with the school's findings or response to the problem, you may contact the superintendent or headmaster of schools in writing to request an independent review by a neutral third party.
- 3. File a complaint** with the Vermont Human Rights Commission or the US Department of Education, Office of Civil Rights.
- 4. Consult a private attorney.**

**If the harassment is directed at an adult it depends on whether the perpetrator is a student or another adult.** If a student harasses an adult, contact the school. If an adult harasses another adult in the school setting, you must call the Attorney General's Office, Civil Rights Unit. This kind of complaint may be considered a part of private employment discrimination. ([See the Employment chapter of \*The Legal Rights of Women in Vermont\*.](#))

## **Bullying**

In 2004, Vermont passed **An Act Relating to Bullying Prevention Policies**. This act prohibits bullying in primary and secondary schools. Bullying is described as a form of dangerous and disrespectful behavior that will not be tolerated.

In 2011, this law was amended to include **bullying and harassment by electronic means such as cell phones or computers**, whether it happened during the school day, or after school hours, or at home.

Principals and superintendants were also given the right to suspend or expel a student who used electronic means to bully another student outside of the school day or not on school property as long as it could be shown to **pose a clear and substantial interference with another student's right to access educational programs**.

**Bullying is defined as any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:**

- is repeated over time;
- is intended to ridicule, humiliate, or intimidate the student; and
- occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or
- does **not** occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs.

This prohibition should be in the school's handbook and should make students aware of the prohibition against bullying, the penalties for bullying and the procedures for reporting bullying. Schools are required to have a comprehensive plan for dealing with student misbehavior.

Under federal law, schools that have computers with internet access and are receiving internet services at a discounted rate must enforce a federal standard of internet safety. That includes student education on appropriate online behavior, such as social networking websites, chat rooms, and cyberbullying awareness and response.

School administrators are also required to notify the parent or guardian of a student who commits an act of bullying. If a student is under 18, the school is required to notify the parent or guardian of the student who is a victim of bullying.

### **If you or your child is being bullied:**

Students may anonymously report acts of bullying to teacher and school administrators. Parents or guardians may file a written report of suspected bullying with the school. **Any teacher or other school staff who witness acts of bullying or receives**

**student reports of bullying are required to notify school administrators.** School administrators are required to investigate any written reports filed and if a complaint is made orally, the complaint will be reduced to writing.

## **Bullying and Harassment by Electronic Means**

Vermont criminal law also prohibits the use of the telephone or other electronic communications to terrify, intimidate, threaten, harass or annoy you or your children. **This is a criminal offense.** In addition to using the avenues described above to address the issue, you may also contact the police.

## **No Child Left Behind Act**

The No Child Left Behind Act of 2001 requires that all public school students must achieve certain levels of achievement in reading and math. Schools that have not made adequate yearly progress (AYP) for three or more years are **required to offer additional services, such as tutoring outside the regular school day, to eligible students.** If you need information about service providers or to find out if you or your child is eligible, contact your local school or supervisory union/district office.

## **Students With Disabilities**

**The Individuals with Disabilities Education Act and Vermont's Special Education Rules**, establish criteria to determine eligibility as a child with a disability. Such disability categories include, for example, autism spectrum disorders, traumatic brain injury and emotional disturbance. Children with attention deficit disorder (ADD) or attention deficit/hyperactivity disorder (ADHD) may qualify if the disorder adversely affects his or her educational performance. *Please note that this is only a very partial list of disabilities.*

**If your child is under the age of three** and you have a concern about your child's development or suspect a disability, you should contact the Children's Integrated Services Program (CIS) that is part of the Vermont Department for Children and Families (DCF). To find the CIS coordinator in your area, call 211.

Under federal and State law, **all children with a disability from 3 through 21 years of age are entitled to a free appropriate public education.** Each school district must ensure that the **same educational programs and extracurricular activities** are available to children receiving special education that are available to students without disabilities. In addition, federal and State law vest the parents of children with disabilities with a variety of procedural rights to ensure the provision of a free appropriate education.

School districts have an affirmative obligation to identify and evaluate children and youths suspected of having a disability. If you have a child between the ages of 3-21 that you, the school or a social service agency thinks may have a disability that qualifies her/him for special education services, you or the school may **request that your child**

**receive a comprehensive special education evaluation.** If your child has never been evaluated, **your consent to the testing is required before the evaluation can take place.**

This evaluation will determine:

- whether your child has a disability;
- whether that disability negatively affects your child's performance at school in one or more of the basic skill areas; and
- whether your child needs specialized instruction to meet his or her needs.

If your child has never been evaluated, **your consent to the testing is required before the evaluation can take place**. The school's **Evaluation and Planning Team (EPT)** must develop a plan to evaluate your child, including information provided by you. **You are a member of the EPT and have the right to receive a copy and review the comprehensive evaluation report, as well as have it explained to you.** If you disagree with the results of the school's comprehensive evaluation you have the right to request an independent evaluation at the school's expense. If the evaluation finds that your child meets the three criteria listed above (often referred to as the "three gates)," your child will be entitled to receive **special education and related services.**

Special education services consist of specialized instruction designed to meet a child's unique educational needs, including extended school year services. Related services encompass a wide array of special services. These include but are not limited to including **counseling, individualized classes, occupational therapy, physical therapy, recreational programs, certain medical services, speech/language therapy, transportation, and residential programs.** Students who receive special education services must be re-evaluated at least every 3 years. A re-evaluation also is required if **you** or the school request it or if the school proposes a **significant change** in your child's program or placement.

Federal and state law require a school district to develop and implement an **Individualized Education Program (IEP) for your child** based on his or her unique, individual needs. Whenever the IEP team for your child meets, you have the right to be given advance written notice of the meeting.

Your child's IEP must include certain specific information. Included in an IEP are the details of the special programming your child is eligible to receive. This includes details such as:

- goal setting objectives;
- a detailed description of services to be provided;
- the reasons for those services;
- any accommodations to be made available to your child.

There are extensive guidelines about what needs to be included in your child's IEP. Your school is required to give you a copy of the **Parental Safeguards Notice (parental rights)** so that you know what your rights are in this process. It is important that you work closely with the special educator at your child's school to be sure all the specific information is included in your child's IEP and that your child's needs are being met.

### **Addressing Disagreements about Your Child's IEP**

If you disagree with any aspect of your child's educational program or placement you can:

- request a meeting with your child's IEP team at the school;
- submit a written request for mediation to the Vermont Department of Education. Mediation of the problem can only occur if the school agrees to go to mediation;
- request a due process hearing by writing to the Commissioner of Education if you cannot work out your problems with the school through negotiation or mediation. You may want the help of a lawyer if you choose this option;
- appeal an unfavorable due process decision by filing a complaint in State or federal court.

If you disagree with the results of an evaluation, you can request that the school re-evaluate your child or request an independent evaluation. (These options may only be available in certain circumstances.)

If you have problems with how the school is generally dealing with your child, you can file an administrative complaint with the Vermont Department of Education and have the Commissioner of Education make a decision based on an investigation of your complaint.

If you disagree with the Commissioner's decision, you can ask the U.S. Department of Education to review the decision.

If you believe the school has not complied with the Individuals with Disabilities Act (IDEA) or the federal regulations governing special education, you can file an administrative complaint with the Vermont Agency of Education and have the Secretary of Education make a decision based on an investigation of your complaint.

### **Additional Rights**

If an evaluation determines that **your child has a disability but is not eligible for special education, your child might still be eligible for some reasonable accommodations and certain services.** These rights are available under Section 504 of the federal Rehabilitation Act of 1973 and under the Americans with Disabilities Act, Title III. The school must inform parents of these rights, write a plan under Section 504 and provide reasonable accommodations and/or services for eligible students.

## **Education of Pregnant and Parenting Students**

Both Vermont and federal law protect students who are pregnant or parenting from being discriminated against by their schools. Schools must provide **an opportunity for pregnant or parenting students to participate in and complete their public school education, and to do so without being subjected to discrimination.**

Vermont law defines a pregnant or parenting student as a legal student who is pregnant, or has given birth and has placed a child for adoption, or has experienced a miscarriage, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or is the parent of a child.

Vermont laws allow a pregnant or postpartum student to attend any approved public school in Vermont or an adjacent state, an approved independent school in Vermont, or another educational program approved by the Vermont State Board of Education. The law also requires the state to pay the educational costs for a pregnant or postpartum student who wants to attend a state board-approved educational program in a 24-hour residential facility for up to eight months after the student has given birth. This can be extended if there is a plan for reintegrating the student into the community that is approved by the Vermont Secretary of Education.

## **Grants for Students Formerly in DCF Custody**

Vermont law has established a financial aid grant program for students who were in the custody of the Department for Children and Families (DCF) for at least six months between the ages of 16 and 18 and who are now between the ages of 18-24 and enrolled in a degree program at a Vermont College.

These grants (up to \$3,000) are available only after individual and family contributions and other forms of grant and gift financial aid resources have been tapped. VSAC or college financial aid departments can help you or your student through the process.

## **Relevant Laws**

### **Vermont:**

Bullying, Harassment and Hazing laws: 16 V.S.A. §§ 11(a)(26) (32), (a)(30), (33)(A), 140b, 151-154, 164-166, 178, §570, §570a, §570b, §570f, §570i, §570j, 1161(a)(6)

Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4501, 4502

Disturbing the Peace by Use of Telephone or Other Electronic Communications, 13 V.S.A. § 1027(a)

Pregnant students 16 V.S.A. § 1073

Special Education Act, 16 V.S.A. § 2941, et seq.

State Board of Education Manual of Rules and Practices, Rules 1250, 1251, 1252, 2360-2369

Grants for students formerly in DCF custody, 16 V.S.A. § 2845

### **Federal:**

Americans with Disabilities Act, Title III, 42 U.S.C.A. §12101, et seq.

Federal regulations for IDEA, 34 CFR Part 300

Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §1400, et seq.

Individuals with Disabilities Education Improvement Act of 2004

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794, et seq.

Title IX of the Education Amendments Act of 1972, 20 U.S.C.A. §1681, et seq.

Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §2000d

No Child Left Behind Act of 2001, 20 U.S.C.A. § 6301, et seq.

47 USC §254(h)(5)

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