

SUPPORT House Bill 2547 (Fritchey)

Department of Human Rights Jurisdiction over Discrimination in the Classroom



In 2007, the General Assembly passed PA 95-0668, which aligned the Illinois Human Rights Act's (IHRA) definition of "place of public accommodation" with the definition found in federal law, including the Americans with Disabilities Act (ADA). The 2007 enactment, however, created an unwarranted exception to the jurisdiction of the Department of Human Rights (Department), leaving claims of unlawful discrimination in the classroom without a recourse. SB 2256 corrects this problem.

Currently, Victims of Hostile or Discriminatory Classrooms Have No Place to Seek an IHRA Remedy:

The IHRA includes nonsectarian schools as a place of public accommodation, but ironically DISALLOWS a student's claim of discrimination arising from "conduct of the class, by the teacher or instructor, or any activity within the classroom or connected with a class activity such as physical education." This "classroom conduct" exception, however, leaves students facing prohibited discrimination with NO ability to even file a complaint under the IHRA.

- The "classroom conduct" exception is contrary to the underlying purpose of the IHRA and the 2007 enactment, which was to bring our state human rights law in line with federal anti-discrimination laws, such as the ADA. Neither the ADA nor other federal non-discrimination laws that apply to schools, such as Title IX or Title VI of the Civil Rights Act of 1964, create a "classroom conduct" exception.
 - Serious harassment directed at students because of their race, sex, disability status or sexual orientation and other discriminatory classroom treatment violates federal law. *Bryant v. Garvin County Sch. Dist. No. I-38*, 334 F.3d 928 (10th Cir. 2003) (race harassment); *Davis v. Monroe County Bd. Of Ed.*, 526 U.S. 629 (1999) (sexual harassment); *K.M. ex rel. D.G. v. Hyde Park Cent. Sch. Dist.* 381 F.Supp. 2d 343 (S.D.N.Y. 2005) (disability harassment); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000) (sexual orientation harassment).
 - The "classroom conduct" exception bars students with meritorious complaints from the relief available under the IHRA. Even though federal law claims may exist for this serious discriminatory conduct, the IHRA claims process is much more accessible for persons who do not have an attorney than is a federal court lawsuit. Moreover, a state remedy reinforces our state's settled public policy that discrimination in places of public accommodation will not be tolerated.

Twelve of the Fifteen Most Populous States Prohibit Discriminatory Classroom Conduct: Of the fifteen most populous states, ten prohibit "classroom" discrimination against multiple protected categories of students (California, Florida, Indiana, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Washington); two prohibit "classroom" discrimination against students who are disabled (Texas and Virginia), and only two fail to address it at all (Georgia, North Carolina).

- These other large states prohibit all discrimination in educational programs and activities on the basis of at least disability, but more commonly race, sex and other bases. The right to be free from discrimination in these other states is enforceable either in court or through an administrative process.

Student Safety, Welfare and Public Health are Better Served by Granting Agency Jurisdiction:

Discrimination and harassment are harmful to students and must not be left unaddressed. According to the National Youth Violence Prevention Resource Center:

- ◆ Almost 30% of youth in the U.S. (or over 5.7 million) are involved in schoolhouse harassment. Researchers have found that years later, long after the harassment has stopped, adults who were harassed as youth have higher levels of depression and poorer self-esteem than other adults.
- ◆ Harassment affects a child's future. Young people who bully are more likely than those who don't to skip school, drop out of school, smoke and drink alcohol, and get into fights.
- ◆ Harassment affects the social environment of a school, creating a climate of fear, inhibiting the ability to learn, and leading to other anti-social behavior. School harassment has come under intense public and media scrutiny amid reports that it may have been a contributing factor in Columbine High School shootings in 1999 and other school tragedies since then.
- ◆ Harassment is often directed at students because of their race, sex, disability, sexual orientation or other status protected under the IHRA. This bill provides a remedy for this harassment.