



ANNUAL REPORT

Fiscal Year 2014

January 2, 2014

The five sitting VHRC Commissioners and their terms of appointment*:

Mary Marzec, Commission Chair	2008-2018
Nathan Besio	2007-2017
Donald Vickers	2008-2016
Mercedes Mack	2011-2015
Mary Brodsky	2011-2019

*All appointments are for five-year terms and expire on the last day of February.

Staff

Name	Position	Date of Hire
Karen Richards	Executive Director	3/18/2013
Ellen Maxon	Administrative Law Examiner	10/2/2006
Nelson Campbell	Administrative Law Examiner	4/27/2010
Katherine Spence	Administrative Law Examiner	12/1/2014
Paul Erlbaum	Part-time Executive Staff Ass't.	11/16/1999
Tamar Cole	Part-time Executive Staff Ass't.	10/8/2012

Vermont Human Rights Commission

MISSION STATEMENT

The mission of the Vermont Human Rights Commission is to promote full civil and human rights in Vermont. The Commission protects people from unlawful discrimination in housing, state government employment and public accommodations.* The Commission pursues its mission by:

- Enforcing laws
- Mediating disputes
- Educating the public
- Providing information and referrals
- Advancing effective public policies on human rights

* A public accommodation is an establishment such as a school, restaurant, office or store that offers facilities, goods or services to the public.

INTRODUCTION

The Vermont Human Rights Commission (VHRC) is the state agency having jurisdiction over claims of unlawful discrimination in housing, state government employment, and public accommodations. Public accommodations involve the provision of goods and services by businesses to the public (including but not limited to stores, restaurants, professional offices, and hospitals) and by state and local governments (including schools). The Commission has four statutorily mandated roles: enforcement, conciliation, education and public policy development.

The name “Human Rights Commission” is a bit of a misnomer. The Commission’s statutory charge is enforcement of Vermont’s *civil rights laws*. While the concept of human rights encompasses a very broad range of rights, civil rights are limited to those established by state and federal laws that require equal rights for certain protected categories. The law also prohibits individuals or entities from taking adverse action (discriminating) against individuals in the protected categories based on their membership in one or more of the categories. The Vermont Human Rights Commission enforces state anti-discrimination/civil rights laws; it does not enforce federal laws. Vermont law is broader than federal law in terms of the categories of people who are protected from discrimination. See page 6 for a list of the protected categories by type of case (federal categories are in bold type).

The VHRC staff conduct impartial investigations of allegations of discrimination under the Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, the Vermont Fair Employment Practices Act (for State government employees only)¹ and the anti-harassment provisions of Title 16 (education) 16 V.S.A. §11 and §570 *et seq.*, and determine whether there are reasonable grounds to believe that unlawful discrimination occurred in a case. During the course of the impartial investigation, Commission staff seek to resolve complaints through conciliation and, if appropriate, formal mediation. If the Commission finds reasonable grounds to believe that a person or entity discriminated against someone in a protected class, the executive director engages in post-determination conciliation efforts. If a settlement cannot be reached, the Commission is authorized to file suit in state court to obtain remedies for violations of the state’s civil rights laws.

The Commission is also charged with increasing “public awareness of the

¹ Individuals with discrimination complaints concerning private employment file their complaints with the Vermont Attorney General’s Office, Civil Rights Division.

importance of full civil and human rights for each inhabitant of this state;" examining "the existence of practices of discrimination which detract from the enjoyment of full civil and human rights;" and with recommending "measures designed to protect those rights." 9 V.S.A. §4552. It is within these roles that the broader range of "human rights" are addressed by the Commission. In furtherance of these goals, Commission staff speak with and provide training to individuals and groups about their rights and responsibilities under state and federal civil rights laws, work with individuals, agencies and groups to combat bias and bigotry, and supply information, legal analysis, and advice to the Legislative, Executive and Judicial branches.

By its enabling statute, the Human Rights Commission is an enforcement agency not a legal services or advocacy organization. The Human Rights Commission does not represent either party in a complaint.

JURISDICTION

The Vermont Human Rights Commission has jurisdiction over allegations of unlawful discrimination in the following areas:

HOUSING	PUBLIC ACCOMMODATIONS	STATE EMPLOYMENT
Race	Race	Race
Color	Color	Color
Sex	Sex	Sex
Religion	Religion	Religion
National Origin	National Origin	National Origin
Disability	Disability	Disability
Sexual Orientation	Sexual Orientation	Sexual Orientation
Marital Status	Marital Status	N/A
Gender Identity	Gender Identity	Gender Identity
Age	N/A	Age
Minor Children	N/A	N/A
Public Assistance	N/A	N/A
N/A	N/A	Ancestry
N/A	N/A	Place of Birth
N/A	N/A	HIV blood test
N/A	N/A	Workers' Compensation
N/A	N/A	Family/Parental Leave
N/A	Breastfeeding mothers	Breastfeeding mothers
N/A	N/A	Credit history
N/A	N/A	Flexible work hours

STRATEGIES TO ACHIEVE THE MISSION AND VISION

- Complaints alleging violations of anti-discrimination laws are investigated impartially and decided in a timely manner by the Human Rights Commission.
- Complainants and respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolution of their dispute.
- Commission staff offers information, referrals, educational programs and educational training to those who request these services. A small fee may be charged to cover expenses.
- The Commission provides leadership in public policy developments with respect to civil and human rights issues in Vermont, provides testimony to the legislature on such issues and advice to the executive and judicial branches upon request.
- Commission staff engage in coalition and community activities that address the needs of members of protected categories.

VHRC PROGRAM OPERATIONS

VHRC Contact Information

Office hours:	7:45 a.m. - 4:30 p.m. Monday - Friday
Telephone number:	(800) 416-2010 (Toll Free Voice Line) (802) 828-2480 or 828-1625 (Voice) (877) 294-9200 (Toll Free TTY Line)
Fax number:	(802) 828-2481
Mailing address:	14-16 Baldwin Street Montpelier, VT 05633-6301
E-mail address:	human.rights@state.vt.us
Website:	hrc.vermont.gov

Staffing

There are five Human Rights Commissioners appointed by the Governor, with the advice and consent of the Senate, for five-year terms. Commissioners may be re-appointed. The Commissioners meet regularly, usually monthly, to discuss and decide the merits of individual discrimination complaints, as well as to set the overall policy of the organization. (See page 2 for a listing of the Commissioners)

The Commission also has a staff of six state employees. The Commissioners hire, supervise and direct the organization's executive director who also acts as the Commission's legal counsel and legislative liaison. The executive director hires, supervises and directs two part-time executive staff assistants, and three administrative law examiners/trainers. (See page 2 for a listing of staff)

Karen Richards was hired as the executive director and began her work in March 2013. Ms. Richards has many years of experience as a supervisor and litigator.

Current Enforcement Priorities

Enforcement priorities not only inform the Commission's planning of educational and outreach activities, but are also one of the criteria considered by the Commissioners in making their decisions on potential litigation. The priority areas for the Commission's work for 2014 were:

- Persons with "hidden" disabilities*;
- School harassment;
- Accessibility of businesses and government buildings;
- Accessibility issues in Vermont correctional facilities;
- Vermont Equal Pay Act violations.

*Hidden disabilities include not only psychiatric conditions but also learning disabilities, seizure disorder, traumatic brain injury, chronic fatigue syndrome and the like.

Phone Contacts

In FY14, the VHRC's records indicate it received 963 calls for assistance from the general public. The vast majority of these calls do not result in formal complaints being filed. Many of the calls are citizens seeking assistance for issues beyond VHRC's jurisdiction - - those are referred to other appropriate organizations. Some of the calls result in informal cases.² (9 informal cases and 70 formal complaints were accepted in FY14.) Other calls require a VHRC staff person to answer basic questions regarding Vermont's various discrimination laws. VHRC does not provide legal counsel or advice. Finally, many calls involve citizens who merely want someone at the State level to listen to their situation.

COMPLAINTS

Enforcement Programs

Vermont's anti-discrimination laws protect people from discrimination based on race, color, sex, sexual orientation, religion, national origin, mental or physical disability, age, marital status and, gender identity. Different categories are protected in each area: housing, employment, and public accommodations. (See chart on page 6). For example, in addition to the above reasons, a person may not

² An "informal case" is a situation, (often an accessibility issue), that can be resolved easily and does not require a full investigation.

be denied housing because of the presence of minor children or due to receipt of public assistance.

A “complaint” as used in this report refers to those citizen contacts that result in a formal VHRC investigation. For an allegation of discrimination to become a formal investigation, a citizen must allege the *prima facie*³ elements of a violation of Vermont’s discrimination laws in one of VHRC’s areas of jurisdiction - - housing, public accommodations or State government employment.

The staff receives and impartially investigates allegations of unlawful discrimination only after an individual has signed a complaint under oath. At the conclusion of the investigation, staff investigators write Investigation Reports that are reviewed and approved by the Executive Director. They are then distributed to the parties and to the Commissioners who consider these reports at their monthly meeting for their review and determination in executive session. The parties to the complaint (the complainant and the respondent) are invited to attend, present the reasons why they agree or disagree with the staff recommendation and answer questions from the Commissioners about the circumstances surrounding the complaint.

Only if the Commission determines that there is sufficient evidence to show that illegal discrimination occurred does the Investigative Report become a public record. In addition, by statute, all settlements entered into by the Commission become public record. If the Commission issues a cause finding, the executive director will actively pursue settlement negotiations for a period of up to six months. The Commission will attempt, either through its staff or by providing a professional mediator, to bring the parties to agreement on a settlement to resolve the matter. Past settlements have included agreements not to discriminate in the future, modification of inaccessible premises or discriminatory policies, anti-discrimination education, letters of apology, compensation for damages, attorneys’ fees and modest civil penalties to the VHRC.

If the Commissioners determine there are no reasonable grounds to believe that discrimination occurred, the case is closed and remains confidential. The parties are free to make the information about the case public if they so desire. Additionally, the complaining party may decide to pursue legal or other administrative action, but VHRC would not be part of those actions.

³ A *prima facie* case lists the facts that if proven to be true would be a violation of the specific law. (e.g., in a housing discrimination case the complainant must allege that she is a member of a protected class, that she experienced an adverse housing action and that the adverse action was due to her membership in the protected class.)

The Commission only has legal authority to investigate complaints, negotiate and enforce anti-discrimination provisions in settlements, and to bring an action in court after a cause finding and failed efforts to resolve the dispute informally or to enforce a settlement agreement. If illegal discrimination is proven to a judge or jury, the court may impose fines or monetary damages, costs and attorney's fees against the respondent as well as require other remedial measures to avoid further violations of law.

Complaints Filed & Investigated

Types of Complaints Filed & Disposition FY13 v FY14

	<u>Housing</u> <u>'13</u>	<i>Housing</i> <i>'14</i>	Public Accom. '13	<i>Public</i> <i>Accom.</i> <i>'14</i>	Employ. '13	<i>Employ.</i> <i>'14</i>	Total '13	<i>Total</i> <i>'14</i>
Accepted during yr	27	30	17	30	11	10	55	70
Closed during yr	32	27	34	19	8	12	74	56
Open @ close of yr	3	4	8	18	11	9	22	33
Informal Cases Accepted	4		14	9	3		21	9

Discrimination issues involving the protected category of disability continue to account for the largest portion of complaints, both formal and informal, that the VHRC addresses. In the area of formal complaints, disability was an issue in 57% of the complaints, followed by 14% and 4% for sex and retaliation, respectively. These three protected categories accounted for 75% of the VHRC investigations during FY14.

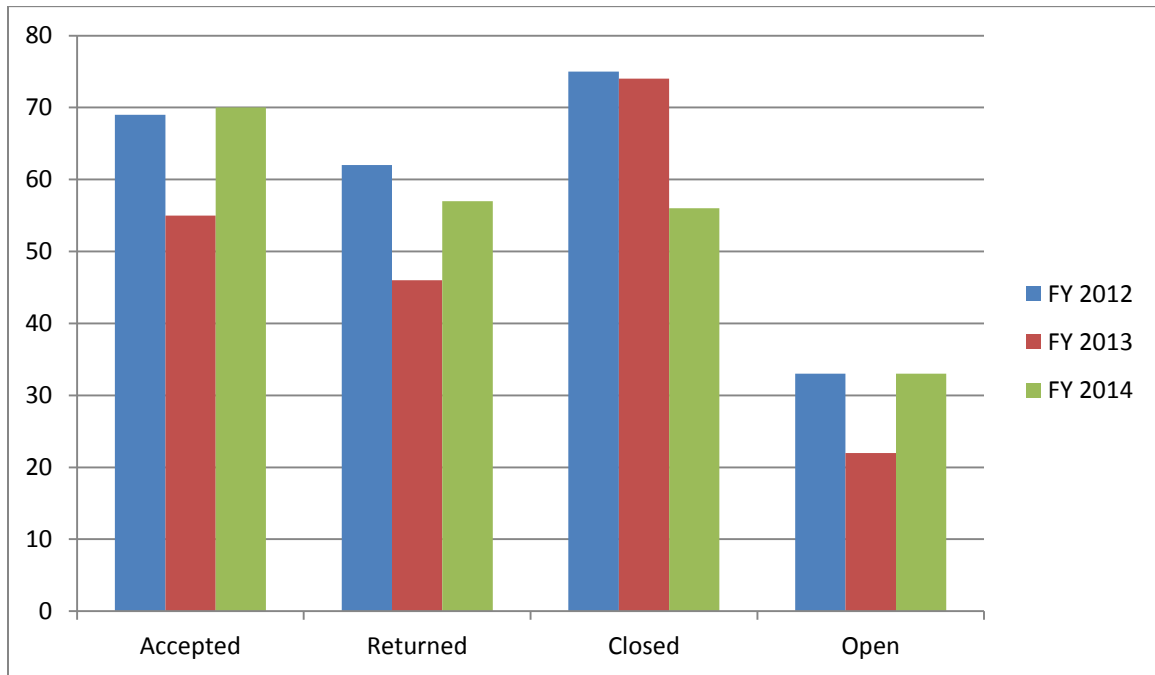
- VHRC had ten (10) State employment complaints this past year and three (3) of those ten (10) complaints involved the protected category of sex.
- 63% of VHRC's formal housing complaints involved disability.
- 60% of VHRC's public accommodation complaints involved disability.

Protected Categories in Complaints Filed in FY14*

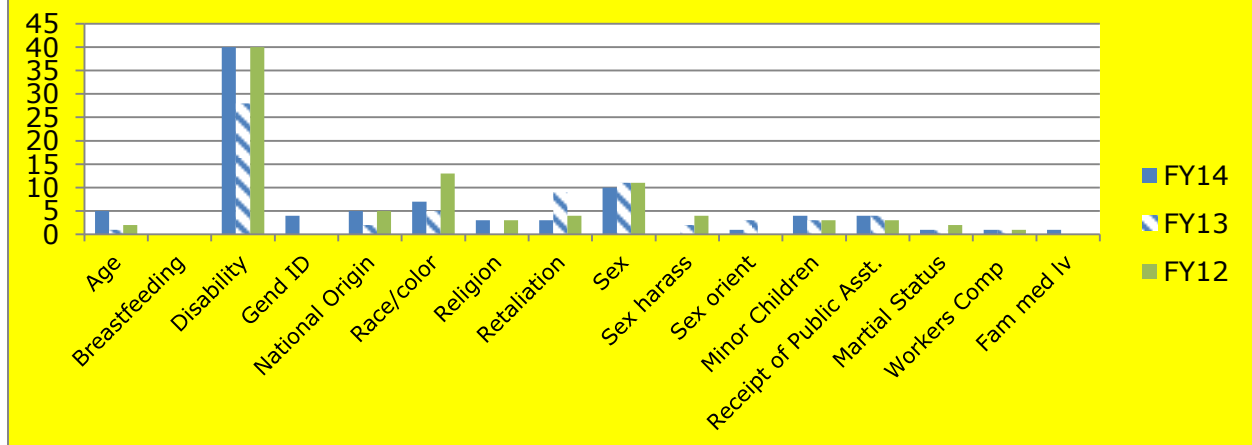
Protected Category	Housing	Public Accommodations	State Employment	Total
Age	2	n/a	3	5
Breastfeeding	n/a	0	0	0
Disability	19	18	3	40
Gender Identification	2	1	1	4
National Origin	1	2	2	5
Race/Color	4	2	1	7
Religion	0	3	0	3
Retaliation	0	2	1	3
Sex	4	3	3	10
Sexual Harassment	0	0	0	0
Minor Children	4	n/a	n/a	4
Receipt of Public Assistance	4	n/a	n/a	4
Marital Status	0	1	n/a	1
Family Leave	n/a	n/a	1	1
Workers Comp	n/a	n/a	1	1
Sexual Orientation	1	0	0	1
Total	41	32	16	89

*Totals will not equal total number of actual complaints because many cases allege discrimination based on more than one protected category.

Summary of Complaints FY12, FY13 and FY14



FY14 - FY13 - FY12 Protected Categories



Informal Complaints

The informal complaint process allows VHRC to resolve simple matters without having to use the more complex, timely and costly formal investigative procedure. Many times informal complaints are related to public accommodation accessibility issues and the property owner is very willing to fix the problem.

In FY14 VHRC handled nine (9) informal complaints. One (1) of these originated in FY13, and five (5) were holdovers from FY13. Six (6) of the complaints were resolved successfully. Three (3) informal complaints were closed for other reasons including complainants not wanting to pursue a formal complaint, complainants seeking resolution in a different forum and no evidence of discrimination. Several informal complaints were converted to formal cases. Two (2) informal complaints were carried over to FY15.

Closure of Formal Complaints

In FY14, fifty-six (56) formal complaints were closed. Twenty-four (24) of the complaints, or 43%, were resolved pre- or post-determination through VHRC's conciliation/mediation processes. Complainants in these cases received a total of almost \$345,000 in monetary settlements. In addition most settlements included some public interest relief including training, changes in policy or procedures, or other relief tailored to the circumstances.

A total of eleven (11) cases were heard by the Commission. In four (4) of the complaints, the Commission found that there were reasonable grounds to believe that illegal discrimination had occurred, and in eight (8) cases the Commission found there were no reasonable grounds to believe that illegal discrimination had occurred.⁴

Ten (10) cases--18% of the total closed cases--were either dismissed for various administrative reasons or withdrawn by the complainant. Dismissals or withdrawals can take place at any point in the investigative process.

Summary of Some Reasonable Grounds Cases

After the VHRC finds reasonable grounds in a case, the executive director

⁴ A no reasonable grounds determination does not necessarily mean that there was no illegal discrimination - - many times it means there was not enough evidence to prove the allegation by a preponderance of the evidence.

attempts to settle the case through conciliation efforts or formal mediation. This settlement process lasts for up to six months after the determination. If this process is not successful, VHRC can file a lawsuit against the responding party. Many times the mediation process results in a settlement with the complainant withdrawing the VHRC complaint. More often than not a reasonable grounds case is not resolved in the same fiscal year as the determination was made.

Below are summaries of some of the cases heard in FY14 in which the Commissioners found there were reasonable grounds to believe that discrimination had occurred.

Housing:

Limoge v. Smart Suites on the Hill (SSH)- (disability- accessible parking). This is a companion case to one filed in FY13 which also resulted in a settlement. The respondent's accessible parking spaces were found not to have adequate signage and staff failed to ensure that accessible spaces were available for those with placards. SSH agreed to correct the improper signage, provide training to all of its staff and revise its accessible parking policies to require employees to enforce the parking restrictions.

Employment:

Vignealt and Benjamin v. Department of Corrections- (Equal Pay)
Complainants, female DOC employees, earned less than a male worker even though they performed the same job and the job required equal skill and effort and was performed under similar working conditions. In addition, both women have far more seniority than the male co-worker. The Commission found the state to be in violation of the state Equal Pay Act provisions. (See the companion case of *Human Rights Commission, Silloway, et al., v. Department of Corrections* below)

Summary of Post-determination Cases

During FY14 VHRC had eleven (11) cases in various post-determination settlement stages. Five of those cases closed during FY14. Below are summaries of some of the FY13 post-determination cases and their status.

Settled Cases

Morgan v. Orange County Sheriff's Department (racial profiling) Complainant was the subject of a traffic stop during a Click It or Ticket (CIOT) campaign when he allegedly failed to use his turn signal when exiting a gas station. A routine check by the officers discovered an outstanding warrant on a violation of probation for a man from Florida whose vital statistics were similar to the complainant's. Despite a clear statement on the warrant not to arrest, officers detained the complainant for over an hour and a half by the side of the road. Even after receiving further exculpatory information from Florida, officers continued to pursue complainant, contacting the U.S. Marshals and going to complainant's house and place of employment. The respondent settled the matter after litigation was filed for \$15,000 in damages for the complainant. In addition, the department agreed to provide training on implicit bias for all officers, and to have all officers sign a statement that they had read and understood the anti-bias policy. Suggestions were also made by VHRC for changes in the policy. These changes were consistent with legislation passed in the 2014 session which required model policies.

Willard v. Volodina- (familial status) Complainant and her boyfriend were searching for housing for themselves and their five children. They contacted the respondent about a three-bedroom house that was for rent. The respondent told them that she would not rent to them with minor children. Testing of the case by a private fair housing organization confirmed that respondent made statements indicating a preference for a family without children and a limitation on renting to a family with children. These discriminatory statements violate the fair housing act. The case settled with training for the respondent and damages for the complainant.

Cases in Litigation

Vermont Human Rights Commission, Lynne Silloway et als. v. Department of Corrections and Department of Human Resources, Docket No. 778-11-12 Wncv (Equal Pay)- Ms. Silloway, a DOC employee, earned approximately \$10,000 a year less than the male worker doing essentially the same work. Ms. Silloway also had more seniority. A complaint was filed in state court in Washington County. Ms. Bertrand and Ms. Deblois, who allege essentially the same facts as Ms. Silloway were added as plaintiffs. The individual plaintiffs have their own attorneys and VHRC represents the public interest. In October 2014, the Superior Court entered a summary judgment in favor of the State. The matter is on appeal to the Vermont Supreme Court.

Vermont Human Rights Commission et al v. Hartford Elks - (Public Accommodations – sex) – This case was filed in 1998. In April of 2005, a jury found that the Elks had discriminated against women in admission to their Club and awarded the individual complainants and the Human Rights Commission damages. The Elks have never voluntarily paid on the judgment which has now reached over \$700,000 due to interest and litigation costs in occurred by the women and VHRC, including nearly \$200,000 owed to the VHRC in civil penalties and attorney’s fees. A separate action has been filed against individual members of the Elks Club after the Vermont Supreme Court determined that some members may be individually liable due to the fact that the Elks’ corporate status had lapsed during the period of the initial litigation. The parties reached a temporary settlement in April 2014 requiring the Elks to make nominal payments towards the outstanding judgment. The individual cases have been stayed until February 2015 to allow for a long-term final settlement.

PUBLIC EDUCATION ACTIVITIES

Committees and Task Forces

VHRC staff members serve on a number of state-wide committees/task forces. Attendance at these meetings provides an opportunity to advocate for civil and human rights and to educate the public about anti-discrimination laws in the State of Vermont. Membership on these various committees helps VHRC fulfill its mandate to advance effective public policy on civil and human rights for the Vermont public. Staff also attend public meetings such as school board meetings, legislative hearings and other public forums where issues of human rights are discussed. These include but not limited to:

Vermont Language Connection, Inc. Advisory Board- This volunteer advisory board is made up of representatives from the judiciary, medical providers, interpreter providers, interpreters, law enforcement and non-profits that are focused on improving the availability and quality of interpreter services for Vermont’s new Americans at a reasonable cost. The advisory board facilitates free training events for interpreters and helps to coordinate services and educate providers about their responsibility under Title VI of the Civil Rights Act to provide meaningful language access to programs.

Fair Housing Council- This task force meets regularly to discuss statewide issues related to fair housing. Members include representatives of government agencies, non-profits, housing authorities, among others. The group provides advice to the

Agency of Commerce & Community Development's housing division on the statewide level, the Consolidated Plan and the Analysis of Impediments.

Vermont Justice Coalition- This coalition is made up of stakeholders from state agencies, non-profits, former offenders and others interested in reforms to the criminal justice system that would reduce prison populations and ensure that all offenders are housed in correctional facilities within the state. Efforts focus both on ways to reduce the number of people entering correctional facilities using treatment (addiction and mental health), diversion and restorative justice, improving conditions within the facilities that will better prepare offenders to lead productive lives when released and providing better re-entry programming and services to help offenders be successful and reduce recidivism.

Hazing, Bullying and Harassment Prevention Advisory Council- This council was created by the legislature to address these issues in Vermont schools. Members include state agencies, the school boards, superintendents and principals associations, non-profits, parents and others.

Training and Outreach to the Community

The VHRC staff was also involved in formal trainings on various and relevant discrimination issues. Staff provided training to thirty-seven (37) groups or individuals including thirty-one (31) related to public accommodations, primarily addressing bullying and harassment in public schools, one employment training, and nine (9) housing trainings. Staff also attended and participated in twenty (20) other outreach activities related to race, national origin, sex, sexual orientation and gender identity. New statistics are being gathered that will better represent the numbers of people reached through these activities for FY15.

Staff Training

In addition to providing training and conducting outreach, staff of the Commission attended a number of state and national training events including:

- Translating Identity Conference at UVM- Burlington, VT
- National Fair Housing Training Academy- Washington D.C.
- Northeast Regional Annual Fair Housing & Civil Rights Conference- Springfield, MA
- Fair Housing Training- Indianapolis, IN
- Investigating and Responding to Complaints of Bullying and Harassment in Vermont Schools- Lake Morey, VT
- ADA Accessibility Training- Randolph, VT
- ADA Accessibility Investigations- Montpelier, VT

Legislation

The Human Rights Commission works actively on legislation that furthers its statutory mandate to increase public awareness of the importance of full civil and human rights for each inhabitant of this state; examines the existence of practices of discrimination which detract from the enjoyment of full civil and human rights; and recommends measures designed to protect those rights.

Staff participated on two legislative study committees: Paid Family Leave and Social Networking Privacy Protection. Neither study resulted in legislation.

The Executive Director actively worked on several bills during the legislative session including:

- Respectful Language- S.27
- Birth Certificates- S.28
- Law Enforcement Agencies- Fair and Impartial Policing- S.184
- Uniform Collateral Consequences of Conviction Act- H.413