

1 H.874

2 Representative Christie of Hartford moves that the bill be amended as  
3 follows:

4 First: By striking out Sec. 13, effective date, and its reader assistance  
5 heading in their entirety and inserting in lieu thereof a new Sec. 13 and reader  
6 assistance heading to read as follows:

7 \* \* \* Harassment in Schools \* \* \*

8 Sec. 13. 16 V.S.A. § 11 is amended to read:

9 § 11. CLASSIFICATIONS AND DEFINITIONS

10 (a) As used in this title, unless the context otherwise clearly requires:

11 \* \* \*

12 (26)(A) “Harassment” means an incident or incidents of verbal, written,  
13 visual, or physical conduct, including any incident conducted by electronic  
14 means, based on or motivated by a student’s or a student’s family member’s  
15 actual or perceived race, creed, color, national origin, marital status, sex,  
16 sexual orientation, gender identity, or disability that has the purpose or effect  
17 of objectively ~~and substantially~~ undermining and detracting from or interfering  
18 with a student’s ~~educational performance~~ education or access to school  
19 resources or creating an objectively intimidating, hostile, or offensive  
20 environment.

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

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

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

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

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

17 (iii) Harassment of members of other protected categories, which  
18 means conduct directed at the characteristics of a student’s or a student’s  
19 family member’s actual or perceived creed, national origin, marital status, sex,  
20 sexual orientation, gender identity, or disability and includes the use of  
21 epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures,

1 threats, graffiti, display, or circulation of written or visual material, taunts on  
2 manner of speech, and negative references to customs related to any of these  
3 protected categories.

4 (C) Notwithstanding any judicial precedent to the contrary, the  
5 conduct described in this subdivision (a)(26) need not be severe or pervasive to  
6 constitute harassment. Creation of an intimidating, hostile, or offensive  
7 environment based on any legally protected category also constitutes  
8 harassment. A hostile environment exists where conduct:

9 (i) has or would have the effect of interfering with a student’s  
10 educational performance, opportunities, or benefits, or mental, emotional, or  
11 physical well-being;

12 (ii) reasonably causes or would reasonably be expected to cause a  
13 student to fear for the student’s emotional safety;

14 (iii) reasonably causes or would reasonably be expected to cause  
15 physical injury or emotional harm to a student; or

16 (iv) occurs off school property and creates or would foreseeably  
17 create a risk of substantial disruption with the school environment, where it is  
18 foreseeable that the conduct, threats, intimidation, or abuse might reach school  
19 property.

20 \* \* \*

1 Second: By adding a new section to be Sec. 14 to read as follows:

2 Sec. 14. 16 V.S.A. § 570f is amended to read:

3 § 570f. HARASSMENT; NOTICE AND RESPONSE

4 \* \* \*

5 (c)(1) To prevail in an action alleging unlawful harassment filed pursuant  
6 to this section and 9 V.S.A. chapter 139, the plaintiff shall prove ~~both of the~~  
7 ~~following~~:

8 ~~(1) The that the student was subjected to ~~unwelcome conduct~~~~  
9 ~~harassment based on the student's or the student's family member's actual or~~  
10 ~~perceived membership in a category protected ~~by law by~~ pursuant to 9 V.S.A.~~  
11 ~~§ 4502.~~

12 ~~(2) The conduct was either In determining whether conduct constitutes~~  
13 ~~unlawful harassment:~~

14 ~~(A) for multiple instances of conduct, so pervasive that when viewed~~  
15 ~~from an objective standard of a similarly situated reasonable person, it~~  
16 ~~substantially and adversely affected the targeted student's equal access to~~  
17 ~~educational opportunities or benefits provided by the educational institution; or~~  
18 ~~Courts shall apply the definition of harassment under subdivision 11(a)(26) of~~  
19 ~~this title.~~

20 ~~(B) for a single instance of conduct, so severe that when viewed from~~  
21 ~~an objective standard of a similarly situated reasonable person, it substantially~~

1 ~~and adversely affected the targeted student's equal access to educational~~  
2 ~~opportunities or benefits provided by the educational institution~~ The  
3 determination shall be made on the basis of the record as a whole, according to  
4 the totality of the circumstances, and a single incident may constitute unlawful  
5 harassment.

6 (C) Incidents that may be harassment shall be considered in the  
7 aggregate with varying types of conduct and conduct based on multiple  
8 characteristics viewed in totality rather than in isolation.

9 (D) Conduct may constitute unlawful harassment, regardless of  
10 whether:

11 (i) the complaining student is the person being harassed;

12 (ii) the complaining student acquiesced or otherwise submitted to  
13 or participated in the conduct;

14 (iii) the conduct is also experienced by others outside the  
15 protected class involved in the conduct;

16 (iv) the complaining student was able to continue the student's  
17 education or access to school resources in spite of the conduct;

18 (v) the conduct resulted in a physical or psychological injury; or

19 (vi) the conduct occurred outside the complaining student's  
20 school.

