

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

H.805

Introduced by Representatives Christie of Hartford, Anthony of Barre City,
Arsenault of Williston, Berbeco of Winooski, Bos-Lun of
Westminster, Burrows of West Windsor, Carpenter of Hyde
Park, Cina of Burlington, Cole of Hartford, Dodge of Essex,
Elder of Starksboro, Farlice-Rubio of Barnet, Garofano of
Essex, Headrick of Burlington, Hooper of Burlington, Howard
of Rutland City, Hyman of South Burlington, LaMont of
Morristown, Logan of Burlington, McGill of Bridport, Morris
of Springfield, Mrowicki of Putney, Mulvaney-Stanak of
Burlington, Patt of Worcester, Priestley of Bradford, Rachelson
of Burlington, Sibia of Dover, Stone of Burlington, Troiano of
Stannard, and White of Bethel

Referred to Committee on

Date:

Subject: Education; harassment; definition; prevention

Statement of purpose of bill as introduced: This bill proposes to amend the
laws prohibiting harassment in schools to provide that harassment need not be
severe or pervasive to constitute unlawful discrimination.

An act relating to amending the prohibitions against harassment in schools

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 16 V.S.A. § 11 is amended to read:

3 § 11. CLASSIFICATIONS AND DEFINITIONS

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

5 * * *

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

15 * * *

16 (C) Notwithstanding any judicial precedent to the contrary, the
17 conduct described in this subdivision (a)(26) need not be severe or pervasive to
18 constitute harassment. In determining whether conduct constitutes harassment:

19 (i) The determination shall be made on the basis of the record as a
20 whole, according to the totality of the circumstances, and a single incident may
21 constitute harassment.

1 (ii) Incidents that may be harassment shall be considered in the
2 aggregate with varying types of conduct and conduct based on multiple
3 characteristics viewed in totality, rather than in isolation.

4 (iii) Conduct may constitute unlawful harassment, regardless of
5 whether:

6 (I) the complaining student is the person being harassed;

7 (II) the complaining student acquiesced or otherwise submitted
8 to or participated in the conduct;

9 (III) the conduct is also experienced by others outside the
10 protected class involved in the conduct;

11 (IV) the complaining student was able to continue the student's
12 education or access to school resources in spite of the conduct;

13 (V) the conduct resulted in a physical or psychological injury;
14 or

15 (VI) the conduct occurred outside the complaining student's
16 school.

17 (iv) Behavior that a reasonable person with the same protected
18 characteristic would consider to be a petty slight or trivial inconvenience shall
19 not constitute harassment pursuant to this subdivision (a)(26).

20 * * *

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

2 § 570f. HARASSMENT; NOTICE AND RESPONSE

3 * * *

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

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

10 ~~(2) The conduct was either:~~

11 ~~(A) for multiple instances of conduct, so pervasive that when viewed~~
12 ~~from an objective standard of a similarly situated reasonable person, it~~
13 ~~substantially and adversely affected the targeted student's equal access to~~
14 ~~educational opportunities or benefits provided by the educational institution; or~~

15 ~~(B) for a single instance of conduct, so severe that when viewed from~~
16 ~~an objective standard of a similarly situated reasonable person, it substantially~~
17 ~~and adversely affected the targeted student's equal access to educational~~
18 ~~opportunities or benefits provided by the educational institution.~~

19 * * *

1 Sec. 3. 9 V.S.A. § 4501 is amended to read:

2 § 4501. DEFINITIONS

3 As used in this chapter:

4 * * *

5 (12)(A) “Harass” means to engage in unwelcome conduct that detracts
6 from, undermines, or interferes with a person’s:

7 * * *

8 (D) ~~The provisions of this subdivision (12) shall not apply to any~~
9 ~~action brought under this chapter pursuant to the provisions of 16 V.S.A.~~
10 ~~§ 570f. [Repealed.]~~

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on July 1, 2024.