

1 S.138

2 Representative Elder of Starksboro moves that the report of the Committee  
3 on Education be amended as follows:

4 First: By striking out Sec. 6 in its entirety and inserting in lieu thereof a  
5 new Sec. 6 to read:

6 Sec. 6. 16 V.S.A. § 11 is amended to read:

7 § 11. CLASSIFICATIONS AND DEFINITIONS

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

9 \* \* \*

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

19 \* \* \*

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

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

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

10                  (iii) Conduct may constitute unlawful harassment, regardless of  
11                  whether:

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

13                           (II) the complaining student acquiesced or otherwise submitted  
14                   to or participated in the conduct;

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

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

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

20           or

1                    (VI) the conduct occurred outside the complaining student’s  
2 school.

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

6                    \* \* \*

7                    Second: By adding a new section to be Sec. 7 to read:

8                    Sec. 7. 16 V.S.A. § 570f is amended to read:

9                    § 570f. HARASSMENT; NOTICE AND RESPONSE

10                    \* \* \*

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

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

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

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

