Draft Language to Amend Education Harassment Statutes

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

§ 11. CLASSIFICATIONS AND DEFINITIONS

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

* * *

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

* * *

(C) Notwithstanding any judicial precedent to the contrary, the conduct described in this subdivision (a)(26) need not be severe or pervasive to constitute harassment. In determining whether conduct constitutes harassment:
(i) The determination shall be made on the basis of the record as a whole, according to the totality of the circumstances, and a single incident may constitute harassment.

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

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

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

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

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

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

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

or

(VI) the conduct occurred outside the complaining student’s school.
(iv) Behavior that a reasonable person with the same protected
class characteristic would consider to be a petty slight or trivial inconvenience shall
not constitute harassment pursuant to this subdivision (a)(26).

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

§ 570f. HARASSMENT; NOTICE AND RESPONSE

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

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

(2) The conduct was either:

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

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

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