

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

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

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

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

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

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

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

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

17 or

18 (VI) the conduct occurred outside the complaining student's
19 school.

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

4 * * *

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

6 § 570f. HARASSMENT; NOTICE AND RESPONSE

7 * * *

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

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

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

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

19 ~~(B) for a single instance of conduct, so severe that when viewed from~~
20 ~~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.~~

3 * * *

DRAFT