

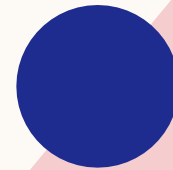
**SEVERE OR
PERVASIVE
STANDARD IN
HARASSMENT**

OVERVIEW

Severe or Pervasive Standard

Current Vermont Law and Policy

Potential Remedies



SEVERE OR PERVASIVE STANDARD

- The severe or pervasive standard is a legal standard that has been created through case law and resulting statute.
- Standard first widely adopted after 1986 SCOTUS decision Meritor Savings Bank v. Vinson.
- This legal standard has had significant impacts on the ability of victims to achieve justice here in Vermont and throughout the country.

SEVERE OR PERVASIVE STANDARD

The standard is has resulted in inconsistent court decisions. Many questions remain unresolved in case law such as:

- What behavior constitutes severe?
- How much and how long must bad behavior occur to be pervasive?



STANDARD IN CURRENT VERMONT LAW AND POLICY

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Understanding this vulnerability for victims of harassment and discrimination, Vermont has eliminated the severe and pervasive standard in the statutes governing both housing (2022) and employment and all other sites of public accommodations except Title 16 (2023).

STANDARD IN CURRENT LAW AND POLICY

There are multiple references to a severe or pervasive standard in Vermont education statutes and policies. These include:

STANDARD IN CURRENT LAW AND POLICY ⁷

Title 16, Section 570f – Civil Remedy Standard

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) 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 by 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.

STANDARD IN CURRENT ⁸ LAW AND POLICY

HHB Model Policy – Definition of Sexual Harassment

- (1) Sexual harassment, which means unwelcome conduct of a sexual nature, that includes sexual violence/sexual assault, sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:
- (i) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education, academic status, or progress; or
 - (ii) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

Sexual harassment may also include student-on-student conduct or conduct of a non-employee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is **severe, persistent or pervasive** so as to deny or limit the student's ability to participate in or benefit from the educational program on the basis of sex.

POTENTIAL POLICY OPTIONS

- Align Title 16 with laws governing discrimination and harassment in employment and in other sites of public accommodations.
- Remove the educational outcome from the definition

CLOSING

- Changes to statute or procedure do not need to dictate specific discipline approaches