

Procedures on the Prevention of Harassment, Hazing and Bullying of Students

I. Reporting Complaints of Hazing, Harassment and/or Bullying

- A. Student Reporting: Any student who believes that they have been hazed, harassed or bullied, or who has witnessed or has knowledge of possible hazing, harassment or bullying, should promptly report the conduct to a school employee.
- B. School employee reporting: School employees who witness or have knowledge of conduct that they reasonably believe constitutes hazing, harassment or bullying shall immediately report it to a designated employee and file a Complaint Report.

If one of the designated employees is a person alleged to be engaged in the conduct complained of, the incident shall be immediately reported to the other designated employee or the school administrator.

- C. Documentation of a Report: Any School Employee receiving a complaint of hazing, harassment or bullying shall promptly file a Complaint Report, which shall include the time, place, and nature of the alleged conduct, the identity of the complainant, alleged perpetrator, and any witnesses.
- D. Whistle-Blower Protection: There shall be no adverse action taken against a person for making a complaint of hazing, harassment and/or bullying when the person has a good faith belief that hazing, harassment and/or bullying occurred or is occurring.
- E. Rights to Alternative Complaint Process: In addition to, or as an alternative to filing a harassment, hazing or bullying complaint to a School Employee, a person may file a complaint with the Vermont Human Rights Commission or the Office for Civil Rights of the U.S. Department of Education at the addresses noted below:

Vermont Human Rights Commission 14-16
Baldwin Street
Montpelier, VT 05633-6301
(800) 416-2010 or (802) 828-2480 (voice)
(877) 294-9200 (tty)
(802) 828-2481 (fax)
Email: human.rights@state.vt.us

Office for Civil Rights, Boston Office
U.S. Department of Education 8th Floor
5 Post Office Square Boston, MA
02109-3921
617-289-0111 (voice)
877-521-2172 (tdd)
617-289-0150 (fax)

II. **Responding to a Report of Hazing, Harassment or Bullying**

- A. Upon receipt of a report that hazing, harassment or bullying may have occurred the Designated Employee shall:
- i. Ensure that a Complaint Report, which shall include the time, place, and nature of the alleged conduct, the identity of the complainant, alleged perpetrator, and any witnesses has been filed.
 - ii. Promptly inform the school administrator(s) of the complaint.
- B. Upon receipt of a Complaint Report, the School Administrator or School Administrator's designee shall:
- i. Determine whether or not to initiate an investigation.
 - ii. If an investigation is initiated, notify, both the complainant and accused individual or, if either is a minor, inform the respective parent or guardian in writing that:
 1. an investigation has been initiated;
 2. retaliation is prohibited;
 3. all parties have certain confidentiality rights;
 4. they will be informed in writing of the outcome of the investigation; and
 5. provide a copy of the policy on hazing, harassment and bullying and these procedures to the complainant and accused individual, or if either is a minor, cause a copy to be provided or delivered to the respective parent or guardian.
- C. All notifications shall be subject to state and/or federal laws protecting the confidentiality of personally identifiable student information.

III. **Investigating Hazing, Harassment and/or Bullying Complaints**

- A. Initiation of Investigation - Timing. Absent special circumstances, such as a written hold request from the VT Department for Children and Families, NH Department for Children, Youth and Families, or law enforcement, an investigation of complaints shall be started within 24 hours.
- B. Investigator Assignment. The school administrator shall assign a person to conduct the investigation; the school administrator may assign themselves or a designated employee as the investigator. No person who is the subject of a complaint shall conduct an investigation.
- C. Interim Measures. It may be appropriate for the school to take interim protective measures during the investigation of a complaint. In such cases, the school will make every effort to prevent disclosure of the names of all parties involved except to the extent necessary to carry out the investigation. In cases involving physical harm, suicidal ideation or serious emotional harm a safety plan will be put in place. Safety

plans must also be considered when the complained about behavior results in difficulty in accessing educational programs at the school.

- D. Due Process. The District will ensure appropriate due process for students and District employees who are accused of infractions. The District will also ensure that steps to provide due process rights do not restrict or unnecessarily delay protections provided to the complainant under Title IX.
- E. Standard Used to Assess Conduct. In determining whether the conduct constitutes a violation of this policy, the investigator shall consider all surrounding circumstances, the nature of the behavior, past incident(s) or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident(s) occurred.
- F. Completion of Investigation – Timing. Absent special circumstances, which shall be documented in the final report, a written investigation report shall be submitted to the school administrator within 5 school days of the initiation of the investigation.
- G. Investigation Report. The investigator shall prepare a written report which will include a statement of the findings of fact to the school administrator, and a recommendation as to whether the alleged conduct constitutes hazing, harassment and/or bullying. The investigation report, when referencing student conduct, is a student record and therefore confidential. However, it will be made available to the Vermont AOE, the Vermont Human Rights Commission or U.S. Department of Education Office of Civil Rights pursuant to their jurisdiction.
- H. Notice to Students/Parents/Guardians. Within five school days of the submission of the investigative report, the school administrator shall:
 - i. Notify in writing both the complainant and accused individual (or if either is a minor, inform the respective parents or guardian) that:
 - 1. the investigation has been completed;
 - 2. whether or not the investigation concluded that a policy violation occurred (and which policy term was violated, i.e. harassment, hazing and/or bullying);
 - 3. Federal privacy law prevents disclosure of any discipline imposed upon a student as a result of the investigation unless the parent/guardian of the accused student and/or the accused eligible student consents to such disclosure.
 - 4. It is unlawful for any person to retaliate against a person who has filed a complaint of hazing, harassment or bullying against a person who assists or participates in an investigation, proceeding or hearing related to the complaint.
 - ii. Notify the Complainant Student (or if a minor, the parent(s) or guardian) in writing of the student's rights to:
 - 1. an internal review by the school of its initial determination as to whether harassment occurred;
 - 2. request an Independent Review of the school's "final"

determination as to whether harassment occurred within thirty (30) days of the final determination or although a “final” determination was made that harassment indeed occurred the school’s response to that harassment was inadequate to correct the problem; and that the review will be conducted by an investigator to be selected by the superintendent from a list developed by the Agency of Education;

3. file complaints of harassment with either the Vermont Human Rights Commission and/or the federal Department of Education’s Office of Civil Rights.

- iii. Notify the Accused Student (or if a minor, the parent(s) or guardian) in writing of the student’s right to appeal as set forth in Section V of these procedures.

IV. Responding to Substantiated Claims

A. **Scope of Response:** After a determination that hazing, harassment or bullying has been committed, the school shall take prompt and appropriate disciplinary or remedial action reasonably calculated to stop the hazing, harassment or bullying, to prevent any recurrence of harassment, hazing or bullying, and to remedy its effects on the victim.

- i. Continuing Access: The District will support victim’ access to District programs, services and activities and consider and implement school-wide remedies, where appropriate.
- ii. Hazing: For organizations the range of penalties may include revocation or suspension of permission to operate in the District.
- iii. Other Responses: Other responses may include providing school-based counseling to the victim or the perpetrator, and additional safety planning measures for the victim.

B. Retaliation. It is unlawful to retaliate against a person who a) files a complaint of hazing, harassment or bullying, or b) assists or participates in an investigation, proceeding or hearing related to such complaint.

V. Post Investigative Reviews

Rights of Complainants

A. **Internal Review of Initial Harassment Determinations By Complainant.**

A complainant or parent of a complainant may request internal review by the District of a designee’s initial determination (following investigation) that harassment has not occurred via written request submitted to the District superintendent. All levels of internal review of the investigator’s initial determination, and the issuance of a final decision, shall, unless special circumstances are present and documented by the District, be completed within

30 calendar days after review is requested.

- B. Independent Reviews of Final Harassment Determinations By Complainant. A complainant may request an independent review within thirty (30) days of a final determination if s/he: (1) is dissatisfied with the final determination as to whether harassment occurred, or (2) believes that although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem.

The complainant shall make such a request in writing to the superintendent of schools within thirty (30) days of a final determination. Upon such request, the superintendent shall promptly initiate an independent review by a neutral person as described under 16 V.S.A. § 570a.(b)(1) and shall cooperate with the independent reviewer so that s/he may proceed expeditiously. The review shall consist of an interview of the complainant and relevant school officials and a review of the written materials from the school's investigation.

Upon completion of the independent review, the reviewer shall advise the complainant and school officials in writing: (1) as to the sufficiency of the school's investigation, its determination, and/or the steps taken by the school to correct any harassment found to have occurred, and (2) of recommendations of any steps the school might take to prevent further harassment from occurring. A copy of the independent review report shall be sent to the Secretary of Education.

The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution. The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records. The costs of the independent review shall be borne by the District. The District may request an independent review at any stage of the process.

- C. Rights to Alternative Harassment Complaint Process. In addition to, or as an alternative to filing a harassment complaint pursuant to this policy, a person may file a harassment complaint with the Vermont Human Rights Commission or the Office for Civil Rights of the U.S. Department of Education at the addresses noted below:

Vermont Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
(800) 416-2010 or (802) 828-2480 (voice)
(877) 294-9200 (tty)
(802) 828-2481 (fax)
Email: human.rights@state.vt.us

Office for Civil Rights, Boston Office
U.S. Department of Education 8th
Floor
5 Post Office Square Boston,

MA 02109-3921
617-289-0111 (voice)
877-521-2172 (tdd)
617-289-0150 (fax)
Email: OCR.Boston@ed.gov

Rights of Accused Students

A. Appeal. Any person determined to have engaged in an act(s) of hazing, harassment and/or bullying may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district. The school board shall conduct a review on the record. The standard of review by the school board shall be whether the finding that an act(s) of hazing, harassment, and/or bullying has been committed constitutes an abuse of discretion by the school level fact finder. Appeals should be made to the school board within ten (10) calendar days of receiving the determination that an act(s) of hazing, harassment and/or bullying has occurred and/or any announced discipline. The school board shall set the matter for a review hearing at the next scheduled school board meeting to the extent practicable, but not later than 30 days from receipt of the appeal filing.

B. Accused Student/Appellant Access to Investigative Reports/Findings. The school district shall make available upon request of the Accused Student/Appellant, any relevant information, documents, materials, etc. related to the investigation and related finding on appeal that can be redacted and de-identified in compliance with the requirements set forth at 34 CFR Part 99. For those documents that cannot be provided due to the requirements set forth at 34 CFR Part 99, when an Accused Student/Appellant seeks a review on the record before the school board of the school district, a school administrator may seek the consent of the parent/guardian of the targeted student, or the accused eligible targeted student (if 18 or older, the targeted student has the ability to consent), in order to inform the accused student of the findings which gave rise to the school's determination that an act(s) of harassment, hazing, and/or bullying occurred. The parent/guardian or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records.

VI. Confidentiality and Record Keeping

A. Privacy Concerns. The privacy of the complainant, the accused individual, and the witnesses shall be maintained consistent with the District's obligations to investigate, to take appropriate action, and to comply with laws governing the disclosure of student records or other applicable discovery or disclosure obligations.

- i. Concerns Related to Harassment Complaints. The scope of appropriate response to a harassment complaint may depend upon whether a student or parent of a minor student reporting the harassment asks that the student's name not be disclosed to the harasser or that nothing be done

about the alleged harassment. In all cases, school officials will discuss confidentiality standards and concerns with the complainant initially. The school will inform the student that a confidentiality request may limit the school's ability to respond. The school will remind the student that both federal Title IX and Vermont Title 9 prevent retaliation and that if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong action if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students. The school will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors the school might consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result. If information about the incident is contained in an "education record" of the student alleging the harassment, as defined by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school will consider whether FERPA prohibits it from disclosing information without the student's consent.

- B. **Document Maintenance.** The Superintendent or school administrator shall assure that a record of any complaint, its investigation and disposition, as well as any disciplinary or remedial action taken following the completion of the investigation, is maintained by the District in a confidential file accessible only to authorized persons. All investigation records created in conformance with this model policy and model procedures, including but not limited to, the complaint form, interview notes, additional evidence, and the investigative report, shall be kept by the Equity Coordinator, Designated Employees and District/Supervisory Union Central Office for at least six years after the investigation is completed.

VII. Reporting to Other Agencies

- A. **Reports to Department of Children and Families.** When a complaint made pursuant to this policy includes allegations of child abuse, any person responsible for reporting suspected child abuse under 33 V.S.A. § 4911, et seq. must report the allegation to the Commissioner of DCF. If the victim is over the age of 18 and a report of abuse is warranted, the report shall be made to Adult Protective Services in accordance with 33 V.S.A. § 6901 et seq.
- B. **Reports to Vermont Agency of Education.** If a harassment complaint is made in a public school about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the principal shall report the alleged conduct to the Superintendent and the Superintendent shall report the alleged conduct to the Commissioner. If a harassment complaint is made in an

independent school about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the head of school is encouraged to report the alleged conduct to the Secretary of Education.

C. Reporting Incidents to Police

- a. FERPA Rights. Information obtained and documented by school administration regarding the school's response to notice of student conduct that may constitute hazing, harassment and/or bullying may constitute an "educational record" regarding the student or student(s) involved as defined by the Family Education Rights and Privacy Act. Accordingly, such information may not be disclosed without prior parent approval to local law enforcement except in response to a lawfully issued subpoena, or in connection with an emergency if disclosure is necessary to protect the health or safety of the student or other individuals.
- b. First Hand Reports. Nothing in this policy shall preclude persons from reporting incidents and/or conduct witnessed first-hand that may be considered to be a criminal act to law enforcement officials.
- c. Hazing Incidents. It is unlawful to (1) engage in hazing; (2) solicit direct, aid, or attempt to aid, or abet another person engaged in hazing; or (3) knowingly fail to take reasonable measures within the scope of the person's authority to prevent hazing. It is not a defense in an action under this section that the person against whom the hazing was directed consented to or acquiesced in the hazing activity. Hazing incidents will be reported to the police in a manner consistent with the confidentiality rights set forth above in this section.

D. Continuing Obligation to Investigate. Reports made to either DCF or law enforcement shall not be considered to absolve the school administrators of their obligations under this policy to pursue and complete an investigation upon receipt of notice of conduct which may constitute hazing, harassment and/or bullying.

VIII. Disseminating Information, Training, and Data Reporting

- A. Disseminating Information. Annually, prior to the commencement of curricular and co-curricular activities, the District shall provide notice of this policy and procedures to students, custodial parents or guardians of students, and staff members, including references to the consequences of misbehavior contained in the plan required by 16 V.S.A. 1161a. Notice to students shall be in age-appropriate language and include examples of hazing, harassment and bullying. At a minimum, this notice shall appear in any publication of the District that sets forth the comprehensive rules, procedures and standards of conduct for the District.
- B. Student Training. The school administrator shall use his/her discretion in developing age-appropriate methods of discussing the meaning and substance of

this policy with students to help prevent hazing, harassment and bullying.

- C. **Staff Training.** The board or its designee shall ensure that teachers and other staff receive training in preventing, recognizing and responding to hazing, harassment and bullying.
- D. **Data Gathering.** Public school districts shall provide the Vermont Agency of Education with data requested by the Secretary of Education.

Legal References:

Title V, Section B, 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.;

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d;

Title IX of the Educational Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq.;

Family Education Rights Privacy Act; 20 U.S.C. §1232g;

Public Accommodations Act, 9 V.S.A. §§4500 et seq.;

Education, Classifications and Definitions, 16 V.S.A. §11(26);(30)(A);(32);

Education, 16 V.S.A. §140(a)(1); Education, 16 V.S.A. §166(e);

Education, Bullying, 16 V.S.A. §570c;

Education, Harassment, Hazing and Bullying, 16 V.S.A. § 570;

Education, Harassment, 16 V.S.A. §570a;

Education, Harassment, 16 V.S.A. §570c;

Education, Harassment, 16 V.S.A. §570f;

Education, Hazing, 16 V.S.A. §570b;

Education, Hazing, 16 V.S.A. §570f

Education, Discipline, 16 V.S.A. §1161a;

Education, Suspension or Expulsion of Pupils; 16 V.S.A. §1162;

Child Abuse, 33 V.S.A. §§4911 et seq.;

Adult Protective Services, 33 V.S.A. §6901 et seq., all as they may be amended from time to time.

Washington v. Pierce, 179 VT 318 (2005).