**VSBIT KIT – VT HHB AND TITLE IX – SCHOOL/DISTRICT SUPERINTENDENT/HEADMASTER EDITION**

***UPDATED*: JANUARY 2021**

**USERS NOTE: This Primer is designed to provide within a condensed and easy to use format a review of the duties and responsibilities imposed upon School/District Superintendents/Headmasters by both (*VT AOE 2015) Model Policies and Procedures on the Prevention of Harassment, Hazing and Bullying* and the *2020 Policy for the Prevention of Sexual Harassment as Prohibited by Title IX*. It is a resource only and should the content of this Primer conflict with either state or federal law or School/District Policy such conflicting authority should be considered binding.**

**INDEX OF DUTIES**

1. **Duty to adopt/update statutorily compliant school policies and procedures with respect to “harassment,” “hazing” and “bullying” and “sexual harassment”………3**
2. **Duty to ensure publication of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment”………………………………………..4**
3. **Duty to ensure distribution and notification to students and minor student parents/guardians of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment”………………………………………..6**
4. **Duty to ensure distribution and notification to School/District staff/teachers/employees of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment”……………………………………….7**
5. **Duty to ensure training of School/District employees/teachers/staff regarding duties and responsibilities imposed via policies and procedures on the prevention of “hazing,” “harassment” and “bullying”………………………………………………8**
6. **Duty to educate students on “hazing,” “harassment” and “bullying” and policies and procedure content…………………………………………………………………10**
7. **Duty to assign two or more employees as “Designated Employees” - per school campus – tasked with receiving complaints and/or reports of alleged “harassment,” “hazing” and/or “bullying”……………………………………………………………11**
8. **Duty to designate an Equity Coordinator and a Title IX Coordinator……..12**
9. **Duty to conduct Internal Reviews of Initial Investigative Determinations in cases of alleged “harassment”………………………………………………………………..13**

**Guidance Memo *Internal Reviews of Initial Determination Regarding Alleged Harassment……………………………………………………………………14***

**FORM Acknowledging Receipt of “Request for Internal Review of Initial Determination Regarding Alleged Harassment”……………………………16**

**FORM Announcing “Final Decision Regarding Alleged Harassment”……17**

1. **Duty to handle and act on requests for Independent Reviews of either Initial Determination of Alleged Harassment or Final Determinations of Alleged Harassment…………………………………………………………………………18**

**Guidance Memo *Independent Reviews*…………………………………….19**

**FORM Acknowledging Receipt of Request for Independent Review…21**

**FORM Announcement of Selection of Independent Reviewer…………22**

1. **Duty to Conduct Board Hearings To Consider Respondent Appeals of Policy Violation Determinations and Related Discipline Matters………………………23**

**Guidance Memo *‘HHB’ Board Appeal Hearings For School/District Determinations of HHB Policy Violations and/or Related Discipline……24***

**FORM Acknowledging Receipt of Request for HHB Board Hearing Request …………………………………………………………………………………29**

**FORMS Announcing Board Decision Following HHB Board Hearing..30-31**

1. **Duty to maintain copies of HHB Investigation files and related materials and correspondence………………………………………………………………………32**
2. **Duty to Report to Department for Children and Families……………………….33**
3. **Duty to Report to Vermont Agency of Education…………………………………34**
4. **Duty to report incidents to the police consistent with FERPA……………………35**
5. **Duty to adopt/update statutorily compliant school policies and procedures with respect to “harassment,” “hazing” and “bullying” and “sexual harassment”.**

**SUMMARY OF DUTIES**: Superintendents/Headmasters should work with and support Boards prior to the commencement of the school year toadopt and up-date policies and procedures. Adoption of (*AOE Model 2015) Policies and Procedures on the Prevention of Harassment, Hazing and Bullying of Students,[[1]](#footnote-1)* satisfies this requirement.

**Specifically**,

1. School/District Boards shall adopt policies for the prevention of “harassment,” “hazing,” and “bullying” at least as “stringent as model policies developed by the Secretary of the Agency of Education.”[[2]](#footnote-2)
2. In addition, on May 6, 2020, the U.S. Department of Education published its long-awaited (final) regulations regarding sexual harassment under Title IX of the Education Amendments of 1972[[3]](#footnote-3). These took effect August 14, 2020 and significantly impacted the manner in which educational institutions investigate and address claims of sex discrimination and harassment as prohibited by Title IX. The regulations create explicit requirements for Title IX grievance procedures, which required significant policy and procedure revisions. Vermont School/District Boards must take the steps necessary to ensure that they are in compliance by updating their Title IX policies consistent with these regulations. The *Model Policy for the Prevention of Sexual Harassment Prohibited by Title IX* was designed to assist with this task.
3. **Duty to ensure publication of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment.”**

**SUMMARY OF DUTIES**: Superintendents/Headmasters should work with their Boards to ensure that appropriate and timely updates are made to any and all publications, including websites, that set forth the comprehensive rules, procedures and standards of conduct for the School/District.

Specifically:

1. School/District Board’s shall ensure complete copies of School/District *Policies and Procedures on The Prevention of Harassment, Hazing and Bullying of Students:*

1.Are included in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school.”[[4]](#footnote-4) *It is also recommended that both policies and procedures also be made available online.*

2.That such notice includes references to consequences of misbehavior contained in the plan required by 16 V.S.A. 1161a.[[5]](#footnote-5)

3. That such notice shall be in age-appropriate language and include examples of “hazing,” “harassment” and “bullying.”[[6]](#footnote-6)

B. With respect to the School/District’s *Policy for the Prevention of Sexual Harassment As Prohibited by Title IX*, the School/District will:

1. Make its *Policy for the Prevention of Sexual Harassment As Prohibited by Title IX* publicly available on the School/District’s website (OR if the District does not maintain a website, available upon request for inspection by members of the public)[[7]](#footnote-7);

2. Include in all student and employee handbooks, and shall make publicly available on the School/District’s website (OR if the School/District does not maintain a website, available for inspection to members of the public upon request) the following information:

a. The District’s policy of non-discrimination on the basis of sex, that it is required by Title IX not to discriminate in such a manner, and that such requirement not to discriminate in the education program or activity of the District extends to admission and employment (all to be prominently displayed on both the website and in publications)[[8]](#footnote-8):

b. The title, name, office address, email address, and telephone number of the District’s Title IX Coordinator (all to be prominently displayed on both the website and in publications)[[9]](#footnote-9);

c. a statement that Title IX inquiries may be referred to either the District’s Title IX Coordinator or to the Assistant Secretary for Civil Rights[[10]](#footnote-10).

1. **Duty to ensure distribution and notification to students and minor student parents/guardians of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment.”**

**SUMMARY OF DUTIES:** Superintendents/Headmasters should work with their Boards to ensure that annually, and prior to the start of curricular and cocurricular activities, notice and distribution to students/custodial parents or guardians of students, of the School/District’s *Policy and Procedures for the Prevention of Harassment, Hazing and Bullying of Students* and *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX.*

Specifically,

1. With respect to the School/District’s *Policy and Procedures for the Prevention of Harassment, Hazing and Bullying of Students,* such notice shall contain:
2. Reference to the consequences of misbehavior for violations[[11]](#footnote-11); and
3. Notice must be in age-appropriate language and include examples of “harassment,” “hazing,” and “bullying.[[12]](#footnote-12)
4. And be mailed or otherwise provided to all school families before the commencement of curricular and cocurricular activities.
5. With respect to the School/District’s *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX,* notice of the policy and the contact information for the School/District’s Title IX Coordinator, and statement that Title IX Inquiries may be referred either to the Title IX Coordinator or to the Assistant Secretary for Civil Rights shall either be mailed or otherwise be provided to students, or seeking to enroll or participate in the District’s educational programs or activities.[[13]](#footnote-13)

**4.****Duty to ensure distribution and notification to School/District staff/teachers/employees of policies and procedures** **with respect to “harassment,” “hazing,” “bullying” and “sexual harassment.”**

**SUMMARY OF DUTIES:** Superintendents/Headmasters should work with their Boards to ensure that staff/teachers/employees are notified of the School/District’s *Policy and Procedures on the Prevention of Harassment, Hazing and Bullying of Students*, and *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX.*

Specifically,

1. School/District Boards, or its designee, are charged annually, and prior to the commencement of curricular and cocurricular activities, with providing to staff/teachers/employees notice of its *Policy and Procedures on the Prevention of Harassment, Hazing and Bullying of Students.*[[14]](#footnote-14)
2. School/District Boards, or its designee, shall provide to staff/teachers/employees, unions or professional organizations holding collective bargaining or professional agreements with the School/District, and all persons seeking employment with the District, its *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX,* and the contact information for the School/District’s Title IX Coordinator, and statement that Title IX Inquiries may be referred either to the Title IX Coordinator or to the Assistant Secretary for Civil Rights.[[15]](#footnote-15)

**5.****Duty to ensure training of School/District employees/teachers/staff regarding duties and responsibilities imposed via policies and procedures on the prevention of “hazing,” “harassment” and “bullying”**

**Summary of Duties:** Superintendents/Headmasters should work with their Boards to ensure that all employees are trained with respect to the obligations and duties imposed via these policies and procedures and by state and federal law as represented within.

Specifically,

1. School/District Boards, or its designee, are charged annually, and prior to the commencement of curricular and cocurricular activities, with providing to staff/teachers/employees training in preventing, recognizing and responding to “harassment,” “hazing” and “bullying.”[[16]](#footnote-16)
2. With respect to the School/District’s *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX,* the District shall ensure that training of all of the following personnel occur as set forth below[[17]](#footnote-17):
3. All District Employees. Training of District Employees shall occur relative to mandatory reporting obligations, and any other responsibilities they may have relative to this Policy.

2. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These individuals must be trained on the following topics:

 a. the definition of sexual harassment as contained within this Policy;

 b. the scope of the recipient’s education program or activity;

c. how to conduct an investigation, appeals, and informal resolution process;

d. how to serve impartially, including by avoiding prejudgment of the facts at issue; and

e. conflicts of interest and bias.

3. Decision-makers. In addition to the topics set forth in 5.B.2. above, decision-makers shall be trained on the following topics:

a. issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant as set forth in *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX,* Section IV.E.1. and IV.F.2.a.

4. Investigators. In addition to the topics set forth in 5.B.2. above, investigators shall be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX,* Section IV.E9.

5. Training Materials. Any materials used for trainings of Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process, must:

a. Not rely on sex stereotypes; and

b. Promote impartial investigations and adjudications of formal complaints of sexual harassment.

c. Be made available to the public either on its website, or if the District does not maintain a website, must make those materials available upon request for inspection by members of the public.

1. **Duty to educate students on “hazing,” “harassment” and “bullying” and policies and procedure content.**

**SUMMARY OF DUTIES**: Superintendents/Headmasters, may be designated by School/District Boards, on an ongoing basis to review current School/District-wide efforts to develop and initiate age-appropriate programs aimed at informing students about its *Policy and Procedures on the Prevention of Harassment, Hazing and Bullying of Students*, the policy definitions and protections against “harassment,” “hazing” and “bullying” as well as procedures for reporting violations - so as to improve student understanding and compliance with its requirements, responses to violations, and to ultimately help reduce and prevent those behaviors.”

Specifically:

1. **Boards shall work with their Superintendents/Headmasters and/or Administrators at a minimum, annually, and prior to the commencement of the school year:**

1.To confirm their specific plan of age-appropriate student instruction on content of:

* 1. the policy, in particular definitions of “harassment,” “hazing” and “bullying,” as well as the protections provided by it for students to be free from such behaviors by EITHER students or staff (in the case of harassment);
	2. the procedures for reporting to designees alleged violations of the policy;

AND

* 1. the expectations for student behaviors around “hazing,” “harassment” and “bullying” and range of potential consequences for violations; and

2.To confirm their ongoing efforts to create a safe school climate of tolerance and respect throughout the school year. [[18]](#footnote-18)

1. **Duty to assign two or more employees as “Designated Employees” - per school campus – tasked with receiving complaints and/or reports of alleged “harassment,” “hazing” and/or “bullying**.”

**SUMMARY OF DUTIES:** Superintendents/Headmasters should, as designees of School/District boards annually appoint two or more persons per school campus as ‘Designated Employees.” In addition, Superintendents/Headmasters

Specifically,

**A. Boards shall work with their Superintendents/Headmasters and/or Administrators annually, and prior to the commencement of the school year to Confirm:**

1. DESIGNATION of at least two or more employees – per school campus - with responsibility for:

a. receiving any report or complaints of suspected “harassment,” “hazing,” and/or “bullying;”

b. documenting those reports or complaints;

and

c. promptly referring them on to Building Administrators.[[19]](#footnote-19)

2. ANNOUNCEMENT and publication of those assignments to school students and parents/guardians;

**AND**

3. TRAININGS for designees in the performance of their duties.

1. **Duty to designate an Equity Coordinator and a Title IX Coordinator.**

**SUMMARY OF DUTIES:** Superintendents/Headmasters are required to designate an Equity Coordinator to oversee all aspects of the implementation of the *Policy and Procedures on the Prevention of Harassment, Hazing and Bullying of Students,* as it relates to the obligations imposed by federal law regarding discrimination, and a Title IX Coordinator to specifically oversee and manage all aspects of the School/District’s compliance with its *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX.*

Specifically,

1. **Superintendents/Headmasters should work with School Administrators - and be prepared to update School Boards - annually, prior to the commencement of the school year about:**

1. the designation of an Equity Coordinator with the task of overseeing all aspects of implementation of the *Policy on the Prevention of Harassment, Hazing and Bullying,* as it relates to the obligations imposed by federal law regarding discrimination[[20]](#footnote-20);

2. publication of the assignment to students and families; and

3. the arrangements made to train Equity Coordinators in the performance of their duties preferably prior to the commencement of the school year.

1. **Superintendents/Headmasters should also ensure the School/District designates and authorizes at least one employee to coordinate its efforts to comply with its responsibilities under this Policy, which employee must be referred to as the “Title IX Coordinator.”[[21]](#footnote-21)**

1.The Title IX Coordinator may also be the Equity Coordinator mentioned above so long as any individual designated by the District as a Title IX Coordinator shall be free of conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

1. **Duty to conduct Internal Reviews of Initial Investigative Determinations in cases of alleged “harassment.”**

**SUMMARY OF DUTIES:** Superintendent/Headmasters, or their designee, must perform an Internal Review of Initial Determinations[[22]](#footnote-22) where requested in cases of alleged harassment.

Specifically,

 **A. Superintendents/Headmasters should:**

1. Take steps necessary (including arranging for trainings as necessary) to understand the purpose and scope of the Internal Review of Initial Determinations Regarding Alleged Harassment (*see* Guidance Memo, page 14);
2. Prepare draft letters to acknowledge receipt of such requests (*see* Form Letter, page 16) and to announce Final Determination Regarding Alleged Harassment outcomes (*see* Form Letter, page 17).

**GUIDANCE MEMO**

***INTERNAL REVIEWS OF INITIAL DETERMINATION REGARDING ALLEGED HARASSMENT***

**Q1: What triggers the right to an internal review by a Complaining Student(s) or minor Complainant Student Parent/Guardian(s)?**

A1:Complaining Student(s) or minor Complaining Student Parent/Guardian(s) may seek an Internal Review ONLY of an Initial Determination Regarding Alleged Harassment, where the school determined the harassment policy was NOT violated. Determinations related to hazing and/or bullying are not subject to this review unless explicitly provided for by school policy, or on a case-by-case basis at the Superintendent’s sole discretion.

**Q2: Can a Complaining Student(s) or minor Complainant Student Parent/Guardian(s) seek an Internal Review where the School/District’s Initial Determination Regarding Alleged Harassment** **determined the conduct DID violate the policy with respect to “harassment” but Complainant Student/Parent nevertheless objects to the sufficiency of the remedies (discipline or otherwise) instituted following that determination?**

A2: NO. In such cases the Complaining Student(s) or minor Complainant Student Parent/Guardian(s)’ option is to either seek an Independent Review of Final Determination Regarding Alleged Harassment, and/or to file a request with either Vermont’s Human Rights Commission and/or U.S.D.O.E. Office for Civil Rights.

**Q3: How does a Student/Parent seek an Internal Review of Initial Determination Regarding Alleged Harassment?**

A3:The 2015 Model Procedures upon which Vermont Procedures are based are silent on the method Complaining Student(s) or minor Complainant Student Parent/Guardian(s) should employ to make this request.It is therefore advised that School/Districts describe explicitly in their HHB procedures that receipt of a written request by the Superintendent is required in order to confirm the content and nature of the request as well as the timeliness of the performance of the *Internal Review* (see next item).

**Q4: Is there a time limit to a Student/Parent right to seek such a review?**

A4: Again, the 2015 Model Procedures upon which Vermont Procedures are based were silent on this point. It can reasonably be assumed that imposing a 30 day time limitation - similar to that imposed by the Model Procedures for “Independent Reviews” – would be deemed appropriate. It is therefore advised that individual schools state explicitly in their procedures that receipt of a **written request be required** **and provided within a 30 day time period,** in order to provide timely review and closure.

**Q5: Who conducts the internal review?**

A**5:** The Procedures state the request shall be submitted to the Superintendent, and by name the review clearly is intended to be done “internally.” The Procedures do not, however, state explicitly whether the review must be done personally by the Superintendent. It is advised that individual schools state explicitly in their procedures that internal reviews shall be conducted by the Superintendent or in exercise of their sole discretion by his/her designee, but in no case shall be performed by the original designee/investigator in that case.

**Q6: What is the scope of this review? What factors are to be considered?**

A6: Again, the 2015 Model Procedures are silent.It is therefore advised that individual schools amend their procedures (Model Procedure V.A.) to state explicitly that scope of the internal review will be a “*consideration of the school’s Initial Determination Regarding Alleged Harassment and finding that harassment did not occur in light of: (1) an assessment of the investigator’s compliance with the policy and investigative procedures; and (2) a review of the evidence collected and reviewed by the investigator in support of his/her determination that harassment did not occur*.” It should note that such review will not include or collect “new evidence, nor re-interviews of witnesses.” Rather the purpose is to determine whether or not the Initial Determination Regarding Alleged Harassment is reasonably supported by a review and weighing of information originally collected and consideration of the investigation’s substantive compliance with procedure.

**Q7: When does the review need to be completed by?**

A7: The 2015 Model Procedures state the review must be completed within thirty days of the request for the review, unless special circumstances are present and documented.If this deadline cannot be met for good cause, it is advised that the Superintendent contact the Complaining Student/Parent in writing in advance of that deadline to state that it will not be met, the reasons for the delay, and the anticipated completion date.

**FORM:** ACKNOWLEDGING RECEIPT OF “REQUEST FOR INTERNAL REVIEW OF INITIAL DETERMINATION REGARDING ALLEGED HARASSMENT”

DATE OF LETTER

LETTER ADDRESSEE

**RE: Acknowledging Receipt of Request for Internal Review**

I am writing to acknowledge receipt on [INSERT DATE] of your written request for an Internal Review of Initial Determination Regarding Alleged Harassment *that your son/daughter was not the target of conduct which violated the harassment policy*. Thank you for your letter.

My review will consider the sufficiency of both the investigation and its conclusions - based on a review of the school’s harassment policies and procedures, and the written materials collected and reviewed by the investigator. The review may involve oral discussions with the investigator. The review will not, however, involve re-interviews of any students or other staff, or perform any independent fact finding regarding the allegations themselves. The review will consider whether or not the school’s Initial Determination Regarding Alleged is reasonably supported by a review of the process followed and information originally collected.

I will announce my decision and Final Determination Regarding Alleged Harassment no later than thirty days after receipt of your request for this review. Please be advised that you will then have the right to seek an Independent Review, conducted by a qualified investigator selected by the school from a list maintained by the Vermont Agency of Education should you so choose. ***This request must be made within thirty days of my final determination following that review.***

Finally, please additionally be advised that you are entitled to refer harassment issues either to the Vermont Human Rights Commission or to the U.S. Department of Education Office of Civil Rights for review. The contact information for these organizations is contained in the policies attached.

Please let me know if you have any questions.

Sincerely,

Superintendent/Headmaster

Enc: School HHB Policies and Procedures

**FORM:** ANNOUNCING “FINAL DECISION REGARDING ALLEGED HARASSMENT”

DATE OF LETTER

LETTER ADDRESSEE

**RE: Final Determination Regarding Alleged Harassment**

I am writing to report on the outcome of the Internal Review of Initial Determination of Alleged Harassment, and announce my Final Determination Regarding Alleged Harassment is:

[AUTHOR MUST CHOOSE ONE OF THE FOLLOWING AS APPROPRIATE AND BE SURE TO ATTACH A COPY OF THE HHB POLICY AND PROCEDURES TO LETTER:

***EITHER***

To uphold the Initial Determination finding no violation of the harassment policy. If you wish to pursue an Independent Review of this Final Determination Regarding Alleged Harassment, please notify me in writing no later than [INSERT DATE thirty days from the date of this letter]. Please note also you retain a right to refer harassment issues either to the Vermont Human Rights Commission or to the U.S. Department of Education Office of Civil Rights for review. The contact information for these organizations is contained in the policies attached.

***OR***

To overturn the Initial Determination finding no violation of the harassment policy. Although federal privacy law prevents me from discussing any specific disciplinary action taken consistent with this Final Determination Regarding Alleged Harassment as it relates to other students, I can tell you we are required to take reasonable steps to prevent a reoccurrence of policy violations and remedy its effects on victims and will take steps consistent with this finding and obligation (subject to the outcome of any appeal the student(s) may timely seek under our Procedures). Should you feel the actions taken are inadequate to correct the problem, you may seek an Independent Review. If you would like to pursue this option please notify me in writing no later than [INSERT DATE thirty days from the date of this letter]. Please note also you retain a right to refer harassment issues either to the Vermont Human Rights Commission or to the U.S. Department of Education Office of Civil Rights for review. The contact information for these organizations is contained in the policies attached.]

I encourage you to contact me directly with any remaining questions or concerns you may have.

Sincerely,

Superintendent/Headmaster

Enc. School HHB Policies and Procedures

1. **Duty to handle and act on requests for Independent Reviews of either Initial Determination of Alleged Harassment or Final Determinations of Alleged Harassment.**

**SUMMARY OF DUTIES**: Superintendents/Headmasters must promptly process and act on timely Complainant Student or minor Complainant Student Parent/Guardian requests for Independent Reviews.

Specifically,

A.Complainant or Minor Complainant Student Parent(s)/Guardian(s) may request an independent review either:

1. **Within thirty (30) days of notice** of either an Initial Determination of Alleged Harassment when Complainant or Minor Complainant Student Parent(s)/Guardian(s) believes that although an initial determination was made that harassment occurred, the school’s response is inadequate to correct the problem;

OR

2.**Within thirty (30) days of notice** of Final Determination of Alleged Harassment where either Complainant or Minor Complainant Student Parent(s)/Guardian(s) are:

* 1. 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.[[23]](#footnote-23)

B. Superintendents/Headmasters should accordingly:

1. Take steps necessary (including arranging for trainings as necessary) to understand the purpose, triggers and scope of the Independent Reviews (*see* Guidance Memorandum, page 19);
2. Prepare draft letters to acknowledge receipt of such requests (*see* Form Letter, page 21) and progress of selection of reviewer (*see* Form Letter, page 22).

**GUIDANCE MEMO**

***INDEPENDENT REVIEWS***

**Q1: How is an *Independent Review* Triggered?**

A1. An Independent Review is triggered by receipt of a *timely request* for an Independent Review from either a Complainant or Minor Complainant Student Parent(s)/Guardian(s). A requests is timely if it is made either (1) Within thirty (30) days of notice of either an Initial Determination Regarding Alleged Harassment when Complainant or Minor Complainant Student Parent(s)/Guardian(s) believes that although an initial determination was made that harassment occurred, the school’s response is inadequate to correct the problem; OR (2) within thirty (30) days of notice of Final Determination Regarding Alleged Harassment where either Complainant or Minor Complainant Student Parent(s)/Guardian(s) are (a) dissatisfied with the final determination as to whether harassment occurred; OR (b) believes that although a final determination was made that harassment occurred, the school’s response was inadequate to correct the problem.

**Q2: Can a District/School request an Independent Review - or is it only for Complainant or Minor Complainant Student Parent(s)/Guardian(s)?**

A2: It is not limited to Complainants. The District may request an Independent Review at any stage of the process.

**Q3: What must a Superintendent/Headmaster do upon receipt of an Independent Review request?**

A3:Upon receipt of a timely request for an Independent Review, the Superintendent/Headmaster shall promptly contact the Agency of Education to obtain a list of neutral reviewers - and then contact and select a reviewer from that list. The list is developed jointly by the Secretary of Education and the Human Rights Commission and maintained by the Secretary. Individuals are placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.” 16 V.S.A. § 570a(b)(1). It is recommended that such contacts be documented in order to demonstrate the timeliness of the response to the Independent Review request, and to maintain hard copies for the file of same.

**Q4: What SHOULD a Superintendent/Headmaster do to communicate with a complainant student/parent of a complainant student who requests an Independent Review?**

A4. Although not required by the Model Procedures, it is best practice to acknowledge in writing the Complainant or Minor Complainant Student Parent(s)/Guardian(s) about receipt of the request for the Independent Review and the progress of the reviewer selection process to assure them that the review is proceeding. (*See* Form Letters, 22 and 23).

**Q5: What must a Superintendent/Headmaster do with respect to the Independent Reviewer?**

A5:The Superintendent/Headmaster MUST cooperate with the reviewer so that s/he may proceed expeditiously. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B.

**Q6: What is the scope of the Independent Review?**

A6. The review shall consist of an interview of the complainant and relevant school officials and a review of the written materials from the School/District’s HHB Investigation. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B.

**Q7: What can the Reviewer see of the school’s files?**

A7. The independent reviewer is considered an agent of the school for the purpose of being able to review confidential student records. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B.

**Q8: Who pays for the Independent Review?**

A8. The costs of the independent review shall be borne by the District. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B.

**Q9: What results from the Independent Review are shared?**

A9**:** 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 make take to prevent further harassment from occurring. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B. This is typically provided via a document entitled Independent Review Report.

**Q10: What happens to the Independent Review Report?**

**A10:** A copy of the Independent Review Report shall be sent to the Secretary of Education. (2015 AOE Model) *Procedures for the Prevention of Harassment, Hazing and Bullying of Students*, V.B.

**Q11: What remedies remain to a complainant/parent of a complainant who remains dissatisfied after the conclusion of the Independent Review process?**

A11**:** A dissatisfied Complainant Student or minor Complainant Student Parent(s)/Guardian(s) may bring concerns to the Vermont Human Rights Commission, U.S.D.O.E. Office For Civil Rights, and, or when appropriate pursue mediation or other alternative dispute resolution.

**FORM:** ACKNOWLEDGING RECEIPT OF REQUEST FOR INDEPENDENT REVIEW

DATE OF LETTER

ADDRESSEE

RE: Acknowledgment of Receipt of Request for Independent Review

I am writing to acknowledge receipt of your [INSERT DATE OF THEIR REQUEST HERE[[24]](#footnote-24)] request for an Independent Review of the school’s \_\_\_\_\_\_\_\_\_\_\_\_\_ [INSERT THE APPROPRIATE PHRASE BY CHOOSING EITHER:

“Final Determination Regarding Alleged Harassment”

OR

“response related to an Initial Determination Regarding Alleged Harassment.”)

Please note that under our policy I shall, as Superintendent/Headmaster, contact the Vermont Agency of Education to request a list of current reviewers. Upon receipt I will promptly select a reviewer, and cooperate with the reviewer to allow the review to proceed expeditiously.

I will keep you updated as to the progress of this process. In the meantime, please do not hesitate to contact me with any questions you may have.

Sincerely,

SUPERINTENDENT / HEADMASTER

Cc: Investigation File

**FORM:** ANNOUNCING SELECTION OF REVIEWER

DATE OF LETTER

ADDRESSEE

RE: Announcement of Reviewer Selection

I am writing to inform you that we have selected and arranged for [INSERT REVIEWER NAME] to conduct the Independent Review in your case.

You can also expect from this point forward the reviewer will contact you directly to keep you updated as to the progress of this process. The process may involve interviews by the reviewer of either you or your child, as well as relevant school officials and a review of the written materials from the school’s investigation. You can expect to hear directly from the reviewer should such interviews be requested.

In the meantime, please do not hesitate to contact me with any questions you may have.

Sincerely,

SUPERINTENDENT / HEADMASTER

cc: Investigation File

**11.Duty to Conduct Board Hearings To Consider Respondent Appeals of Policy Violation Determinations and Related Discipline Matters.**

**SUMMARY OF DUTIES:** School/District Boards are required to conduct “HHB Board Appeal Hearings” to conduct appeal hearings of determinations of policy violations, and/or any related disciplinary actions, timely brought by any person determined by the School/District to have engaged in an act(s) of “hazing,” “harassment” and/or “bullying.”

1. **Superintendents/Headmasters should work with their School/District Boards to:**

1.Take steps necessary (including arranging for trainings as necessary) to understand the purpose and scope of the review (*see* Guidance Memorandum, Page 24);

2.Prepare draft letters to respond to parent requests for Board level appeals (*see* Form Letter p. 30) and to announce outcomes of those appeals (*see* Form Letter pages 31-32);

3.Work with administrators to respond to request by Accused Student/Family requests for access to Investigative Reports/Findings (See School Administrator Primer); and

4.Schedule Appeal hearings in a timely manner.

**GUIDANCE MEMO**

***‘HHB’ BOARD APPEAL HEARINGS FOR SCHOOL/DISTRICT DETERMINATIONS OF HHB POLICY VIOLATIONS AND/OR RELATED DISCIPLINE***

Q1: **When is a student/parent of a student entitled to an appeal to the board under the HHB Procedures?**

A1: Board level appeals, as provided for under the *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students* are limited to persons who have been “determined to have engaged in an act(s) of hazing, harassment and/or bullying.” *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students Section V.* (Rights of Accused).

Q2: **Are students (aged 18 or older) or parents/guardians of a minor students limited in their right of appeal only to those cases in which the Administration has recommended that the student be disciplined under the HHB policy?**

A2: **No.** The right to an appeal does not require, in fact, that there have been any Administration recommendation of discipline against the respondent student. All that is required is the person have been “determined to have engaged in an act(s) of hazing, harassment and/or bullying.” *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students Section V.* (Rights of Accused).

Q3: **This right of appeal is provided for persons deemed to have violated the *(AOE 2015 Model) Policy on the Prevention of Harassment, Hazing and Bullying of Students Section V.* (Rights of Accused Students), which also provides protections from and prohibits acts of “Retaliation.” Are persons therefore similarly entitled to an appeal to the School/District Board where they have been determined to have engaged in an act of Retaliation?**

A3: Are they “entitled” or required to be provided that right? According to the text of the Model Procedures, no. The *Model Procedures on the Prevention of Harassment, Hazing and Bullying of Students*, (issued in 2015 by the Vermont Agency of Education) only provided for appeals in cases of a “determination(s) of act(s) of hazing, harassment and/or bullying.”*(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section V.* (Rights of Accused). However, there is nothing to prevent a School/District from amending their School/District procedures to extend this right of appeal to ALSO include persons found to have engaged in act(s) of Retaliation.

Q4: **Is the Board level appeal limited only to students who are determined to engage in act(s) of hazing, harassment and/or bullying? Put another way, could it apply to teachers or school employees?**

A4: Yes. The 2015 Model Procedures provide the right to “**any person**” found to have engaged in hazing, harassment and/or bullying. *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section V.* (Rights of Accused). The policy definitions of “harassment” and “retaliation,” as provided for by the Model Policy, prohibit those behaviors as committed by either students OR employees. *Policy on the Prevention of Harassment, Hazing and Bullying of Students, Section IV.G and L.* However, as noted above in A3, the right of board review does extend to persons found to have engaged in “retaliation.” *Procedures, Section V.*

**Q5: How should the School/District Board conduct an “HHB Board Appeal Hearing?”**

A5: The HHB Board Appeal Hearing should be conducted in executive session, either as “student matter” and/or as a “personnel matter” depending upon who the appellant is. According to the *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section V.* (Rights of Accused), confidentiality of students, including the complaining student, shall be maintained throughout the appeal process. Accordingly, even where the appellant student/parent waives student confidentiality for the accused/appellant student, in all matters related to student on student conduct the privacy rights of the targeted/victim student shall be maintained, particularly if the facts then known to the community at large render the use of pseudonyms insufficient to protect their rights of privacy. In addition, where the appeal relates to the conduct of a respondent employee (directed towards a student in violation of the policy), the matter likewise should be conducted in executive session as a “personnel” matter and in order to protect the privacy of that complainant student. Again, even where the complainant student has waived their rights of confidentiality, care should always be exercised to conduct the hearing in a manner that protects the confidentiality rights of any other potential student witnesses whose evidence may be discussed or referred to in the course of the hearing.

**Q6: Does the “HHB Board Appeal Hearing” involve the introduction and consideration of “new evidence” either by the receipt of new documents or witness testimony?**

A6: No. In announcing and explaining the HHB Board Appeal Hearing, the Secretary of the Agency of Education’s Memorandum Dated May 29, 2015 stated:

“*It is important to note that the appeal hearing before the Board is not a ‘fact finding’ exercise where the Board …takes any evidence. Rather, this is an appeal hearing ‘on the record’ that simply reviews the record of the investigation and adjudication at the school level*.”

*See* AOE Memorandum Dated May 29, 2015[[25]](#footnote-25), page 3 (emphasis added). That memorandum explicitly stated that the Board is “*not (to hear) from witnesses*.” *Id.*

Q7: **If there are no witnesses, and no documents may be introduced, how then does the Board perform its job in conducting the hearing and deciding the “HHB Board Appeal?”**

A7: Again from the Secretary of the Agency of Education’s May 2015 Memorandum to the Field:

“*The role of the school board will be to hear any relevant arguments that the (appellant) makes, and decide whether the school ‘abused its discretion’ in finding that an act of harassment, hazing, and/or bullying occurred. Under the ‘abuse of discretion’ standard, school level findings are to be given great weight and school boards are not to ‘retry’ the case.”* (AOE Memorandum Dated May 29, 2015, page 3, emphasis added).

**Q8: How must the School/District Board handle any disagreements or disputes raised by the Respondent (student, or parent/guardian or employee) regarding any “relevant facts” as determined within the Administration’s HHB Investigation (relevant facts to be considered those facts relied upon and supporting the Administration’s decision that Respondent had violated the Policy)?**

A8: Recall again that according the AOE Memorandum Dated May 29, 2015, the School/District Board must refrain from conducting its own investigation or independent “fact finding.” Id.

*“The school’s original administrative level findings are to be given great weight and school boards are not to “retry” the case*.”

AOE Memorandum Dated May 29, 2015, page 3 (emphasis added). Rather, the School/District Board’s review of an administrator’s investigative decision that an act of “harassment,” “hazing” and/or “bullying” occurred shall employ an “*abuse of discretion*” standard. *Id.* Thus no administrative finding shall be overturned on appeal “unless the (Board) concludes that the (Administrative) decision below was an arbitrary or irrational finding.” *See Provost v. City of Newburg*, 262 F.3d 146, 163 (2d Cir. 2001).

**Q9: If no new evidence is to be admitted, and witnesses are not to be called, does the HHB Board Appeal Hearing permit either the Student/Parent/Guardian/Employee OR the School Administration to present “arguments” in support of their respective positions?**

A9: Yes. This is one of the two activities explicitly identified by AOE for the School/District Board to perform in conducting these hearings. As set forth in the AOE’s May 2015 memorandum on the topic, the School/District Board will “*hear any relevant arguments that the school district or (respondent) makes, and decide whether the school ‘abused its discretion’ in finding that an act of ‘harassment,’ ‘hazing,’ or ‘bullying’ occurred*.” AOE Memorandum Dated May 29, 2015. Please see the Board Hearing Templates below for guidance on running the hearing.

**Q10: When the focus of an appeal is – either in whole or in part – upon reviewing the Administrator’s discipline decision, what should guide the Board’s decision?**

A10. First, the Board must bear in mind that any student must receive appropriate “due process” prior to discipline and that the amount of due process necessary relates to the seriousness of the discipline. According to State Board of Education Manual 4311.1 a School/District MUST provide the following “minimum” due process rights such that either the Student (or a minor student’s parent/guardian) must receive: (1) Oral OR written notice of charges; (2) basis/foundation for the charges, explanation of the evidence (while maintaining FERPA confidentiality); (3) an opportunity for student to present his/her side of story; and (4) a decision in writing to student (or minor’s parent/guardian). “Long term” suspension in Vermont is determined as any discipline which exceeds 10 days suspension. In those cases, the State Board of Education Manual Rule 4311.2 further requires that the Student or minor student’s parent/guardian be provided an opportunity for a FORMAL hearing before the Board and written Notice of (1) Nature of charges against the student; (2) Date, time and place of hearing; (3) Right to legal representation; (4) Possible penalties facing the student; (5) Opportunity to present evidence; and (6) Opportunity to cross examine witnesses; (7) Decision in writing to parent/guardian.

In addition, by Vermont Statute where the conduct constitutes a violation of the HHB Policy, a School/District is required to consider the following when it makes discipline decisions in that it must, by law, respond to the conduct by taking steps “reasonably calculated” to both stop the offending conduct and “prevent any reoccurrence.”*(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section* *IV.A.* Finally, the Board should keep in mind that by procedure and law while a school conducts its initial investigation, in certain cases there may be obligations for the School/District to take interim measures to protect the safety of a student from serious physical or emotional harm*. Id. at II.C.*

All of the above must be considered by the School/District Board with respect to the hearing’s conduct and scope regarding contested discipline decisions during an HHB Board Appeal Hearing.

**Q11: Can the accused Student or minor student’s parent/guardian see the full Investigative Report prior to the HHB Board Appeal Hearing?**

A11: It depends**.** Respondents are entitled to request production of any relevant information, documents, materials related to the investigation and related findings which they are challenging, and those must be produced to the extent that they can be effectively redacted and de-identified in compliance with Family Education Rights and Privacy Act. If a document may not be redacted in compliance with FERPA, the school administrator may choose to seek written and dated signed consent of the alleged victim’s family in order to disclose the requested information. The School/District, however, is NOT required to seek such a waiver. In short, confidentiality of students, including the complaining student, shall be maintained throughout the appeal process, and if all or some of a report or supporting documentation can not be produced without compromising these protections, such portion or report or documentation may not be produced.

**Q12: How does the Board announce its decision?**

A12: The Board should announce its decision in writing to the Appellant in all cases (*see* Forms, “Sample Board Decision Announcement Letter”). The Board should also inform the Complainant Student, or if a minor, Complainant Student Parent/Guardian when the Board has reversed a “determination of an act(s) of hazing, harassment and/or bullying” and when reversing a determination in a case of alleged harassment, those announcement letters must be sure to provide notice of ongoing rights of review consistent with the Model Procedures and Vermont and Federal Law. (*See* Forms, “Sample Announcement Letter”).

**Q13: Is there anything else the Board needs to know and remember about these appeals?**

A13: **YES!** If the Respondent/Appellant does NOT request the appeal in writing within TEN DAYS of receiving notice of the Administrations finding of a substantiated violation of the Policy, the Appeal is no longer timely and their right to a hearing expires. Be certain, however, to confirm that the announcement letter that informed the Appellant/Respondent of the finding of substantiation specifically alerted them to this ten-day time limitation before informing them that you will be denying them a hearing on that basis.

**FORM** ACKNOWLEDGING RECEIPT of HHB BOARD HEARING REQUEST

DATE OF LETTER

ADDRESSEE

On behalf of the Board I am writing to acknowledge receipt on **[*INSERT DATE*]** of your written request for a board level review of a determination that your son/daughter violated the ***School/District’s Policy on the Prevention of Harassment, Hazing and Bullying of Students*** and/or any discipline imposed as a consequence. ***Please note that your appeal will only be considered timely, however, if your written request is received within ten days of your receipt of the school’s notification of substantiation of a policy violation.***

Please be advised that the purpose of the Board Hearing will be to ascertain whether or not the administration’s investigative decisions reached about a policy violation and/or discipline constitute an abuse of discretion by the Administration. While you will be permitted to present any relevant arguments about this inquiry, please note the Board will not be accepting any new evidence nor admit witness testimony. Rather, the Board will review the record of the investigation and adjudication as performed at the school level, and consider the arguments raised during the hearing.

The Board has set this matter for hearing on **[*INSERT DATE that is as soon as practicable, but no later than 30 days from receipt of parent’s letter*],** and will be held at **[INSERT time]** and **[INSERT location of that hearing].**

Please be reminded that this remains a confidential matter and all students involved are entitled to remain free from retaliation for their participation and/or cooperation in any aspect of this investigation.

Sincerely,

Board Chair /OR Superintendent/HEADMASTER

Bcc: School Investigative File

Enc. School HHB Policy and Procedures

**FORM** ANNOUNCING BOARD DECISION FOLLOWING HHB BOARD HEARING

***To be sent to appellant students only when a finding their conduct violates the Policy on the Prevention of Harassment, Hazing and Bullying has been reversed as a result of a HHB Board Appeal Hearing.***

DATE OF LETTER

ADDRESSEE

I am writing to announce the decision of the (SCHOOL NAME) Board’s (DATE OF HEARING) decision following your appeal of the School’s determination that your son/daughter engaged in an act of [CHOOSE: hazing, harassment and/or bullying and/or related discipline imposed consistent with that finding].

Having duly deliberated and reviewed the arguments and record in this case, the Board has determined that the School/District:

1. [(CHOOSE **ONE**) **Abused/Did not abuse]** its discretion by concluding that harassment/hazing/bullying (CHOOSE **ONE**) occurred;

AND

1. [(CHOOSE **ONE**) **Abused/Did Not Abuse its discretion**] by imposing discipline with respect to the finding that harassment/hazing/bullying (CHOOSE **ONE**) occurred.

If the results of this appeal and the Board’s decision require additional action or implementation you can expect to receive additional information and detail directly from Administration under separate cover. In addition, please be advised that the Complainant Student may retain rights of review under Vermont law beyond the school level which may require further action as outlined in the attached HHB Procedures.

Finally, please be aware that this remains a confidential matter and all students involved are entitled to remain free from retaliation for their participation and/or cooperation in any aspect of this investigation.

Sincerely,

BOARD CHAIR/SUPERINTENDENT/HEADMASTER

Enc. School HHB Policy and Procedures

Bcc: School Investigative File

**FORM** ANNOUNCING BOARD DECISION FOLLOWING HHB BOARD HEARING

***To be sent to complaining students only when a finding that they were a target of HHB has been reversed as a result of a HHB Board Appeal Hearing. Please note that Board decisions related to discipline only are FERPA protected and should NOT be announced to Complainant student.***

DATE OF LETTER

ADDRESSEE

**RE: Announcing Board Level Decision Reversing Administration Determination of Hazing, Harassment and/or Bullying**

I am writing to announce the decision of the (SCHOOL NAME) Board’s (DATE OF HEARING) overturning the School’s determination that your son/daughter was the target of student on student conduct which constituted hazing, harassment and/or bullying. The Board concluded has that the School abused its discretion by concluding that harassment/hazing/bullying (CHOOSE **ONE**) occurred in this case.

**[IN A CASE OF ALLEGED HARASSMENT ONLY INCLUDE THE FOLLOWING ADDITIONL SECTION**: Please be advised that should you be dissatisfied with the Board’s action you may attempt to seek an Independent Review. If you would like to pursue this option please notify me/the Superintendent in writing no later than [INSERT DATE THAT IS thirty days from the date of this letter]. Additionally be advised that you are entitled at any time to refer harassment issues either to the Vermont Human Rights Commission or to the U.S. Department of Education Office of Civil Rights for review. The contact information for these organizations is contained in the policies attached.]

In any case, we will continue to work to provide a safe, respectful and accessible school environment for your son/daughter. [You may want to communicate that the School Administration is willing to meet to discuss this outcome and any related concerns the family may have - if/where appropriate]. Please contact me with any questions you may have.

This remains a confidential matter and all students involved are entitled to remain free from retaliation for their participation and/or cooperation in any aspect of this investigation.

Sincerely,

BOARD CHAIR/SUPERINTENDENT/HEADMASTER

Enc. School HHB Policy and Procedures

Bcc: School Investigative File

**12.Duty to maintain copies of HHB Investigation files and related materials and correspondence.**

**SUMMARY OF DUTIES**: The Superintendent/Headmaster and/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 completion of the investigation, is properly maintained by the School/District.

Specifically,

**A.Maintenance of HHB Investigation records and related correspondence.** All investigation records 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.[[26]](#footnote-26) To that end Superintendents/Headmasters must work with their school administrators annually to:

1. Ensure that Designated Employees and Equity Coordinators maintain copies of all investigation records, and all related correspondence and other documentation, including disciplinary and other evidence of remedial action taken following the completion of an investigation, for at least six years;

2. Ensure that such records are maintained in a confidential file accessible only to authorized persons; and

2. Ensure at the conclusion of each school year thatfull and complete copies of those records maintained by the Designated Employees and Coordinators on to the Central Office, and that the Central Office maintains those records for at least six years.

**13.** **Duty to Report to Department for Children and Families.**

**SUMMARY OF DUTIES:** When a complaint of harassment, hazing and/or bullying is made pursuant to the District’s policies, which 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. 2015 Vermont AOE Model Procedures “Reporting to Other Agencies”).

Specifically,

**A. Superintendents/Headmasters must work with their administrators annually to:**

1.Confirm training for teachers and administrators on the ongoing and separate independent duty to report behaviors to DCF that may also violate the school’s Harassment, Hazing and/or Bullying Policies;

2. Confirm training for staff, teachers and administrators that the involvement of and/or reports to DCF do not relieve staff, teachers and administrators of their obligations to timely pursue and complete an investigation upon receipt of notice which may constitute harassment, hazing and/or bullying.

**14.** **Duty to Report to Vermont Agency of Education.**

**SUMMARY OF DUTIES:** When a complaint of harassment, hazing and/or bullying is made pursuant to the District’s policies, which includes allegations regarding a licensed educator that might be grounds under Vermont law for licensing action in accordance with 16 V.S.A. §1698, the principal shall report the alleged conduct to the Superintendent/Headmasters, and the Superintendent/Headmaster shall report the alleged conduct to the Secretary.[[27]](#footnote-27)

Specifically,

**A. Superintendents/Headmasters must work with their administrators annually to:**

1. Confirm training for school administrators on the ongoing and separate independent duty to report to the Superintendent/Headmaster behaviors of licensed educators that while they may also violate the school’s Harassment, Hazing and/or Bullying Policies (either by conduct directed at a student, or failure to act consistent with duties imposed by these policies to respond or investigate policy violations), may be grounds under Vermont law for licensing action by the Agency of Education.

**15.** **Duty to report incidents to the police consistent with FERPA.**

**SUMMARY OF DUTIES:** Information obtained and documented by the school administration regarding the *school’s response* to notice of student conduct that may constitute harassment, hazing 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.[[28]](#footnote-28)

Specifically,

**A. Superintendents/Headmasters must work with their administrators annually to:**

1.Confirm training for teachers and school administrators on the ongoing and separately independent duty to maintain Student rights to confidentiality where behaviors may also violate the school’s Harassment, Hazing and/or Bullying Policies, such that they can distinguish “educational records” privacy compliance vs. cooperating with a police investigation (eye witness reporting vs. turning over ‘educational records’ in violation of FERPA).

2. Confirm training for staff, teachers and school administrators that the involvement and/or reports made to the local police do not relieve staff, teachers and administrators of their obligations to timely pursue and complete an investigation upon receipt of notice which may constitute harassment, hazing and/or bullying.

1. Vermont AOE takes the position that as soon as updated model policies and procedures are released, Schools are held the standard and requirements imposed by them regardless of whether or not the school has acted to formally adopt them. [↑](#footnote-ref-1)
2. ***See*** 16 V.S.A. §570(b). [↑](#footnote-ref-2)
3. Title IX applies to ANY education program or activity that receives federal financial assistance (“recipients”) and specifically prohibits their discrimination on the basis of sex, including sexual harassment. Until 2020, there had been no binding federal regulations related to sexual harassment under Title IX, only administrative guidance issued by the DOE’s Office for Civil Rights. [↑](#footnote-ref-3)
4. *See (VT AOE 2015) Model Procedures for the Prevention of Harassment, Hazing and Bullying, Section VIII.A.;* 16 V.S.A. §570(c); and 16 V.S.A. §1161a. [↑](#footnote-ref-4)
5. *See (VT AOE 2015) Model Procedures for the Prevention of Harassment, Hazing and Bullying, Section VIII.A.* [↑](#footnote-ref-5)
6. *See (VT AOE 2015) Model Procedures for the Prevention of Harassment, Hazing and Bullying, Section VIII.A.* [↑](#footnote-ref-6)
7. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section III.F.1.* [↑](#footnote-ref-7)
8. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section III.F.2.* [↑](#footnote-ref-8)
9. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section III.F.2.* [↑](#footnote-ref-9)
10. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section III.F.2.* [↑](#footnote-ref-10)
11. *Procedures on the Prevention of Harassment, Hazing and Bullying, Section VIII.A.;* 16 V.S.A. §570(c); 16 V.S.A. §1161a. [↑](#footnote-ref-11)
12. *Procedures on the Prevention of Harassment, Hazing and Bullying, Section VIII.A.;* 16 V.S.A. §570(c). [↑](#footnote-ref-12)
13. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section, III.F.2.* [↑](#footnote-ref-13)
14. 16 V.S.A. §570(c). [↑](#footnote-ref-14)
15. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section, III.F.2.* [↑](#footnote-ref-15)
16. (AOE Model 2015) *Procedures on the Prevention of Harassment, Hazing & Bullying, VIII.C.* [↑](#footnote-ref-16)
17. *Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Section V.F.* [↑](#footnote-ref-17)
18. Source: 16 V.S.A. §570(c). [↑](#footnote-ref-18)
19. *See* 16 V.S.A. §570a(a)(7); §570b(7); §570c(7). [↑](#footnote-ref-19)
20. *Policy on the Prevention of Harassment, Hazing and Bullying of Students, II.3..* [↑](#footnote-ref-20)
21. *Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX, Sec. V.B.* [↑](#footnote-ref-21)
22. *Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section V.B.* [↑](#footnote-ref-22)
23. *Procedures on the Prevention of Harassment, Hazing and Bullying of Students, Section V.B.* [↑](#footnote-ref-23)
24. **NOTE: IF THE DATE OF THEIR REQUEST is more than 30 days AFTER they received notice of the INITIAL or FINAL determinations in their case, the request for INDEPENDENT REVIEW IS NOT CONSIDERED TIMELY (See Guidance Memo, Question 1).**  [↑](#footnote-ref-24)
25. The Agency of Education’s interpretation of procedures it promulgates becomes “controlling weight unless it is plainly erroneous or inconsistent with (them).” United States v. Larionoff, 431 U.S. 864, 872 (1977). [↑](#footnote-ref-25)
26. *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying, Section VI.* [↑](#footnote-ref-26)
27. *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying, Section VII.B.* [↑](#footnote-ref-27)
28. *(AOE 2015 Model) Procedures on the Prevention of Harassment, Hazing and Bullying, Section VII.C.* [↑](#footnote-ref-28)