

School Board Primer

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- 1. DUTY-Adopt/Update Statutorily Compliant School Policies and Procedures:** School Boards are charged to “develop, adopt, ensure the enforcement of, and make available harassment, hazing and bullying prevention policies that are at least as stringent as model policies developed by the Secretary of the Agency of Education.” Legal Authority: 16 V.S.A. §570(b).

SUMMER ACTION ITEM: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year to:

- (1) Adopt current and up to date policies and procedures.

***Tip:** Adoption of AOE Model Policies and Procedures will satisfy this requirement. Adoption of May 2015 Revised Policies and Procedures is strongly recommended.*

Note: Vermont AOE takes the position that as soon as updated model policies and procedures are released, Schools are held to the standard and requirements imposed by them regardless of whether or not the school has acted to formally adopt them.

- 2. DUTY- Publication of Policies and Procedures:** School Boards shall ensure complete copies of policies and procedures on harassment, hazing and bullying, are included in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. Legal Authority: 16 V.S.A. §570(c); 16 V.S.A. §1161a.

SUMMER ACTION ITEM: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year:

- (1) Confirm that updated and current versions of policies and procedures on harassment, hazing and bullying are contained in the School Student Handbook and all related school publications. *It is recommended that both policies and procedures also be made available online.*

- 3. DUTY- Distribute and Notify Students and Parents of Policies/Procedures:** School Boards are charged annually, and prior to the commencement of curricular and co-curricular activities, with providing notice of the harassment, hazing and bullying policies and procedures to students/custodial parents or guardians of students, with reference to the consequences of misbehavior for violations. Notice must be in age appropriate language and include examples of harassment, hazing and bullying. 16 V.S.A. §570(c); 16 V.S.A. §1161a.

SUMMER ACTION ITEM: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year:

- (1) To confirm copies of the school's policies and procedures with reference to possible disciplinary penalties for violations are mailed to all school families before the commencement of curricular and co-curricular activities.

***Tip:** The District may choose to instead announce via an August mailing the weblink address Parents may use to access policies and procedures online (i.e. commensurate with the school's Annual Notice regarding FERPA obligations and other start of the year information forwarded to the community in late July/early August). In this case, however, it is recommended that that same notice inform parents that they retain the right to seek - free of charge - a hard copy upon request (in order to accommodate families without reliable internet access).*

- 4. DUTY- Distribute to and Notify Faculty and Staff of Policies and Procedures:** School Boards are charged annually, and prior to the commencement of curricular and co-curricular activities, with providing notice of harassment, hazing and bullying policies and procedures to faculty and staff. 16 V.S.A. §570(c).

SUMMER ACTION ITEM: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year:

- (1) to confirm distribution of updated policies and procedures to school faculty and staff before the commencement of curricular and co-curricular activities.

***Tip:** Meeting Minutes should be taken to serve as documentation/confirmation this task is completed.*

5. **DUTY- Educate Students On Harassment, Hazing and Bullying Prevention and on Policies and Procedure Content:** School Boards are asked to use their discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect. Source: 16 V.S.A. §570(c).

ACTION ITEM: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year:

- (1) to confirm their specific plan of age appropriate student instruction on both the policies and the procedures and the expectations around harassment, hazing and bullying; and
- (2) to confirm their ongoing efforts to create a school climate of tolerance and respect throughout the school year.

***Tip:** Meeting Minutes should be taken to serve as documentation/confirmation this task is completed.*

6. **DUTY- Designate 2 or More School Employees per School Campus to Receive Complaints on Harassment, Hazing and Bullying:** School boards are required to designate annually two or more persons per school campus with the responsibility of receiving and investigating complaints on harassment, hazing and bullying. Source: 16 V.S.A. §570a(a)(7); §570b(7); §570c(7).

ACTION ITEM LATE SPRING/SUMMER: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, prior to the commencement of the school year to confirm:

- (1) their designation of at least two or more employees with the task of receiving and investigating complaints on harassment, hazing and bullying;
- (2) publication of those assignments to students and families; and
- (3) the arrangements made to train designees in the performance of their duties.

***Tip:** Meeting Minutes should be taken to serve as documentation/confirmation this task is completed.*

7. **DUTY- Conduct Hearings in cases of Student/Parent of Student Appeals of Policy Violation Determinations and Related Discipline Matters. Duty to Facilitate Board Level Appeals of HHB Policy Violation Determinations and Related Discipline Matters:** Any person determined to have engaged in act(s) of harassment, hazing and/or bullying **may appeal** the determination and/or any related disciplinary action(s), directly **to the school board of the school district**. Source: 2015 AOE Model Procedures (V) (Rights of Accused Students)

SUMMER ACTION ITEM: Boards shall work with their Superintendents/Headmasters to:

- (1) Review the Guidance Memorandum (p. 6) on purpose and conduct of Board level reviews.
- (2) Prepare draft letters to respond to parent requests for Board level appeals (SEE SAMPLE LETTER p.9) and to announce outcomes of those appeals (SEE SAMPLE LETTER pages 10-11).
- (3) Work with administrators to respond to request by Accused Student/Family requests for access to Investigative Reports/Findings (See School Administrator Primer).
- (4) Schedule Appeal hearings in a timely manner.
- (5) Arrange, when appropriate, for additional legal training and guidance of Boards on the conduct of these hearings.

GUIDANCE MEMO

BOARD APPEAL OF POLICY VIOLATION DETERMINATIONS AND RELATED DISCIPLINE

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

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

Q: Are students/parents of students only entitled to appeal if their child has been disciplined under the HHB policy?

A: **No.** The right to an appeal does not require, in fact, **any discipline** to have been imposed by the school against the student, rather only that the student was “determined to have engaged in an act(s) of harassment, hazing and/or bullying.” Source: 2015 Model Procedures (V) (Rights of Accused Students).

Q: Are students/parents of students entitled to an appeal to the board under the HHB Procedures if the student has been determined to have engaged in an act of retaliation as prohibited under the Policy on the Prevention of Harassment, Hazing and Bullying of Students?

A: **According to the text of the Model Procedures, No.** Those procedures, as issued in 2015 by the Vermont Agency of Education speak only of “determination(s) of act(s) of harassment, hazing and/or bullying.” Source: 2015 Model Procedures (V) (Rights of Accused Students). There is nothing which would prevent a School District or Supervisory Union, however, from extending this right of appeal by amending its procedures to include those persons found to have engaged in act(s) of retaliation.

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

A: **Yes.** As currently drafted in 2015, the Model procedures provide the right to “**any person**” found to have engaged in harassment, hazing and/or bullying. The policy definitions of Harassment and Retaliation as provided for by the Model Procedures capture harassing and retaliatory conduct directed against students by both students AND adult employees. As noted above the right of board review does not yet explicitly provide for review in cases of retaliation. Accordingly, as currently written the Model Procedures **provide a right of review to the board for school employee adults (teachers/staff/coaches) who engage in harassment, and potentially non-employee third parties who are determined to have engaged in an act(s) of harassment.**

Q: How Will The Session Be Conducted?

A: In executive session as it relates to a student discipline matter and is therefore confidential.

Q: Will The Board Hear Evidence From Witnesses?

A: **No.** The Board will only review the written record created by the Designee and/or Superintendent of the investigation and decisions taken at the school level. (AOE Guidance Memo 5/29/15). Accordingly, the Board will neither require, nor have the power to require, an alleged victim or his/her Parents to attend the Hearing.

Q: Can the Accused/Accused Parents See the Full Documentary Record Before the Hearing?

A: **Maybe.** Parents seeking a board appeal are entitled to request production to them of any relevant information, documents, materials related to the investigation and related findings they are challenging, and those must be produced to them by the School to the extent they can be 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. Confidentiality of students, including the complaining student, shall be maintained throughout the appeal process. Source: 2015 Model Procedures (V) (Rights of Accused Students).

Q: MUST the school seek consent of the alleged victim's family in order to disclose information otherwise protected by FERPA if an appellant asks the school to do so?

A: **No.** The school MAY seek consent, but is not required to do so. Source: 2015 Model Procedures (V) (Rights of Accused Students).

Q: May the Parent or School Present Arguments?

A: **Yes.** Either side may present arguments as to whether the findings and decisions taken at the school level constituted an **abuse of discretion**.

Q: How Does the Board Make its Decision? Does The Board Give Deference to School's Action Below?

A: **Yes.** The school's original administrative level findings are to be given great weight and school boards are not to "retry" the case. (AOE Guidance Memo 5/29/15). This is again consistent with federal courts when applying the "abuse of discretion" standard. The Board is not to engage in its own independent "fact finding." The Board should also consider that where Student conduct constitutes a violation of the HHB Policy, a school is required by law to take steps "reasonably calculated to prevent" any reoccurrence and to remedy its effects on the victim(s). Finally, the Board must keep in mind that while a school conducts its initial investigation, it may in some cases be obligated to take interim measures to protect the safety of a student from serious physical or emotional harm.

Q: How Should The Board Announce Any Decision?

A: The Board should announce any decision reached in writing to the Appellant in all cases (See Sample Announcement Letter, p.10). The Board should also announce in writing to the Complainant Student/Parent of Complainant Student in such cases the Board has reversed a “determination of an act(s) of harassment, hazing and/or bullying” and in cases of alleged harassment those announcements should be sure to provide notice to that family of their ongoing rights of review consistent with the Model Procedures and Vermont and Federal Law. (See Sample Announcement Letter, p.11).

SAMPLE ACKNOWLEDGEMENT LETTER

TO: Accused Student / Appellant Student/Parent(s)

RE: Request for Board Level Appeal of Determination of Harassment, Hazing and/or Bullying And/Or Related Discipline

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's *[choose one]* harassment, hazing and/or bullying policies and/or any discipline imposed as a consequence.

Please be advised that the purpose of our review will be to ascertain whether or not the decisions reached about a policy violation and/or discipline constituted an abuse of discretion by the school level fact finder. While you will be permitted to present any relevant arguments as to whether the school abused its discretion, the Board will not take any evidence or hear the testimony of witnesses. Rather, the Board will review the record of the investigation and adjudication as performed at the school level.

The Board has set this matter for review 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 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

SAMPLE ANNOUNCEMENT OF BOARD DECISION LETTER

TO: Accused/Appellant Student/Parent(s)

RE: Announcing Board Level Decision Following Appeal of Determination of Harassment, Hazing and/or Bullying and/or related discipline

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 harassment, hazing and/or bullying and/or related discipline imposed consistent with that finding.

The Board has concluded that the School:

- (1) [(CHOOSE ONE)Abused/Did not abuse its discretion by concluding that harassment/hazing/bullying (CHOOSE ONE) occurred; and
- (2) [(CHOOSE ONE)Abused/Did Not Abuse its discretion] by imposing discipline with respect to the finding that harassment/hazing/bullying (CHOOSE ONE) occurred.

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.

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

SAMPLE ANNOUNCEMENT OF BOARD DECISION LETTER

To be sent to complaining students only when a finding that they were a target of HHB is reversed. Board decisions related to discipline only are FERPA protected and should not be announced to Complainant student.

TO: Complainant/Targeted Student/Parents

RE: Announcing Board Level Decision Reversing Administration Determination of Harassment, Hazing 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 harassment, hazing and/or bullying. The Board concluded 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: 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. [Offer to meet on next steps, 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