**VSBIT KIT – VT HHB AND TITLE IX - SCHOOL/DISTRICT BOARD 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 Boards 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.**

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1. **Duty to adopt/update statutorily compliant school policies and procedures with respect to “harassment,” “hazing” and “bullying” and “sexual harassment”.**

**SUMMARY OF DUTIES**: Boards shall work with their Superintendents/Headmasters and/or Administrators annually, 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**: School/District Boards must (with their Superintendents, Administrators and/or Headmasters) 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:** School/District Boards shall 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)
6. **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:** School/District Boards shall also 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)
3. **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:** School/District Boards or their designees, shall 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**: School/District Boards, or their designees, on an ongoing basis should work with Superintendents/Headmasters to review current 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:**
2. 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
1. To confirm their ongoing efforts to create a safe school climate of tolerance and respect throughout the school year. [[18]](#footnote-18)
2. **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:** School/District boards MUST annually appoint two or more persons per school campus as ‘Designated Employees.”

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:** Schools/Districts 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. **Schools/Districts should work with School Administrators - 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. **Schools/Districts must authorize 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 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 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. **School/District Boards shall work with their Superintendents/Headmasters to:**
2. Take steps necessary (including arranging for trainings as necessary) to understand the purpose and scope of the review (*see* Guidance Memorandum, Page 14);
3. Prepare draft letters to acknowledge receipt to parent requests for Board level appeals (*see* Form Letter p. 19) and to announce outcomes of those appeals (*see* Form Letters pages 44-45).
4. Work with Administrators to respond to Appellant requests for access to Investigative Reports/Findings (See School Administrator Primer).
5. Schedule HHB Board Appeal Hearings in a timely manner.
6. Arrange, when appropriate, for additional legal training and guidance of Boards on the conduct of these hearings (*see* Templates on following pages for hearings regarding “bullying,” page 20, “harassment” page 26, “sexual harassment” page 32, and “hazing” page 38).

**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[[22]](#footnote-22), 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

***INSTRUCTIONS:***

***This template is designed to help a Board chair conduct an HHB Board Appeal Hearing in a case of substantiated “bullying.”***

**Template for HHB Determination Board Level Appeals**

[Board Chair}: Requests Motion “***to enter into executive session to discuss a confidential student matter.***”

[Once in session:] INTRODUCTIONS: Introduce attendees by name and role.

[EXPLANATION OF THE PROCESS TO APPELLANT PARENT AND APPELLEE ADMINISTRATION BY THE BOARD CHAIR]

BOARD CHAIR: Tonight we are here to consider a student parent’s request for an appeal of a determination reached by [INSERT ADMINISTRATOR NAME] of the [INSERT SCHOOL NAME] that a student engaged in conduct which violates the School’s Policy for the Prevention of Harassment, Hazing and Bullying, specifically **bullying**.

As a case which involves a finding of bullying, I would remind the Board now of the definition of bullying contained section IV. A. in our state mandated Policy:

**“Bullying”** means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

1. Is repeated over time;
2. Is intended to ridicule, humiliate, or intimidate the student; and
3. (i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school sponsored activity; or

(ii) does not occur during the school day on school property, on a school bus or at a school sponsored activity and can be shown to pose a clear and substantial interference with another student’s right to access educational programs.

This appeal hearing is also being held pursuant to Section V.A. of our Procedures for the Prevent of Harassment, Hazing and Bullying, with respect to the “Rights of Accused Students” which provides that

“***any person determined to have engaged in an act(s) of …. bullying may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district.*“**

Section V.A. further provides that the **standard of review** to be applied by the Board in such an appeal, shall be a “review” of the “record” in order to determine whether the [INSERT SPECIFIC ADMINSTRATOR’S TITLE]’s decision in this case, that **bullying** occurred, and/or any discipline imposed as a consequence, constitutes an “**abuse of discretion.”**

In a Memorandum to the Field, issued by then-Secretary of Education Rebecca Holcombe, dated May 29, 2015, accompanying the announcement of these Procedures and this Appeal process, the Secretary emphasized the following:

It is important to note that the appeal hearing before the school board is not a ‘fact finding’ exercise where the school board hears from witnesses or takes any new evidence. Rather, this is an appeal hearing “on the record” that simply reviews the record from the investigation and adjudication at the school level.

The role of the school board will be to hear any relevant arguments that the school district or parent/eligible student makes, and decide whether the school ‘abused its discretion’ in finding that an act (of bullying) occurred.

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2.

**[TO BE READ ONLY IN THIOSE CASES WHERE THE PARENT ASKED TO RECEIVE A COPY OF THE INVESTIGATIVE REPORT IN ADVANCE OF THE BOARD HEARING**

I would like to confirm at this time that prior to this evening’s hearing you were provided with a copy of the relevant **Investigative Report** supporting the school’s finding, via letter dated [**INSERT DATE OF TRANSMITTAL LETTER**] in advance of tonight’s appeal.

Pursuant to the Procedures, and Federal Privacy law (FERPA) the copy of the report that was previously provided to you was redacted to protect the privacy rights of other students who were involved with the investigation.

Can you please confirm for the Board that you received a redacted copy of that report?

I can also advise you that the Board is also now in possession of the fully unredacted version of the INVESTIGATED REPORT AND DOCUMENTATION and will be reviewing it when considering tonight’s appeal.

In reviewing the Report, and in considering arguments by either Appellant or the Administration regarding the Report’s conclusions, and in order to determine as required whether or not an **abuse of discretion** occurred - the Board will again be guided by the Secretary’s Memo which states:

**Under the ‘abuse of discretion’ standard, school level findings are to be given great weight and school boards are not to ‘retry’ the case.**

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2 (emphasis added).

**Accordingly the Appellant (Student/Parent) will have the burden of persuasion in this matter to demonstrate that the Administrations finding of [bullying] and/or its related disciplinary decisions constitute an “abuse of discretion.”**

I will now turn to an explanation of the order of presentation of arguments that will occur tonight.

As the Administration’s action is being challenged and as Appellant Student/Parent will be making arguments about its decisions, it will assist the Board to hear a description of the Administration’s actions and decisions, before the Board hears and considers the Parents argument and criticisms of those decisions.

Accordingly, we will first hear **the Administration’s recitation of its work – with references to other students and other student information redacted for their privacy.** Please note that the Administration will have an opportunity to make its presentation without interruption.

At the conclusion of the Administration’s presentation, the Board will then have an opportunity to ask clarifying questions of the Administration.

At the conclusion of the Board’s questioning of the Administration, **Student/Parents will then be provided with an opportunity to present Arguments in support of their contention that the Administration’s finding of bullying, (and disciplinary decisions if also appealed) in this matter constitutes an “abuse of discretion.”** Please note that the Student/Parents will have an opportunity to make its presentation without interruption.

At the conclusion of the Student/Parent’s presentation, the Board will have an opportunity to ask questions.

The Administration will then be given an opportunity for final remarks, followed by the Parent’s final remarks. Any further questions at this stage will be allowed ONLY at the discretion of the Board Chair, and with consideration for avoidance of repetition of topics already covered and a focus on topics relevant to the inquiry before the Board.

**At the conclusion of the presentations the Board will, after proper motion, retire to deliberative session where it will consider and decide the matter. Parents will be informed of the decision in writing via a letter of determination.**

[At the Board Chair’s discretion you may offer to contact the parents by phone after the hearing to inform them of the decision, with the letter to arrive thereafter).

Before I continue, do you have any questions at this time about the process?

**Board Chair: “If there are no questions we will proceed now with the Administration’s presentation.”**

[Turn it over to the Administration]

**[BE sure to NOT allow interruptions of the presentation by Appellant(s).** If they attempt to ask questions remind Appellant(s) they will have a chance to make their arguments AFTER the Administration presentation and Board questioning of the Administration is complete.]

(Then once the Administration completes their presentation):

Board Chair: **I would like to invite the Board to ask any questions they may have at this time.**

 (Once Board Finishes their Questions of the Administration):

Board Chair: **If there are no further questions we will proceed now with the Appellant Student/Parent(s)’ Presentation.**

(Once the Appellants finish their presentation):

Board Chair: I **would like to invite the Board to ask any questions they may have of the Appellant(s) at this time.**

(Once the Board Finishes questioning the Appellant(s)):

Board Chair: **I would like to now invite the Administration to make any brief final remarks to the Board**.

[Questions of Administration at this point are up to Board Chair discretion.]

(Once the Administration Finishes final remarks):

Board Chair: **I would like to now invite the Appellant(s) to make any brief final arguments or recommendations to the Board**.

(Once the Appellants finish their Remarks:)

Board Chair:

**At this time the presentation and argument portion of this appeal is now concluded. Appellant will receive written notice of our decision promptly after tonight’s hearing.**

**[AT BOARD CHAIR’s DISCRETION: “Before the Board enters deliberative session I will remind Appellants that I am happy to have them depart for the evening and I will inform them by phone call of the outcome of our deliberations when they are concluded (get their phone number if they want to leave)].**

**I would now invite a motion to enter deliberative session:**

**Once properly in deliberative session…**

**Guidance in Deliberative Session**

The Board should consider the Administration’s decisions regarding a finding of:

Bullying; and/or

Discipline;

…in order to determine whether those administrative decisions constituted “a**buse of discretion.**”

In so doing the Board is advised by AOE to give “**great weight**” to the administration’s decisions and not to “retry” the case.

In so doing they shall review the unredacted Investigative Report and supporting documentation.

The board shall communicate its findings via a letter and MAY contact the family via phone at the conclusion of the hearing to inform them immediately of the decision as well.

***INSTRUCTIONS:***

***This template is designed to help a Board chair conduct an HHB Board Appeal Hearing in a case of substantiated “harassment.”***

**Template for HHB Determination Board Level Appeals**

[Board Chair}: Requests Motion “***to enter into executive session to discuss a confidential student matter.***”

[Once in session:] INTRODUCTIONS: Introduce attendees by name and role.

[EXPLANATION OF THE PROCESS TO APPELLANT PARENT AND APPELLEE ADMINISTRATION BY THE BOARD CHAIR]

BOARD CHAIR: Tonight we are here to consider a student parent’s request for an appeal of a determination reached by [INSERT ADMINISTRATOR NAME] of the [INSERT SCHOOL NAME] that a student engaged in conduct which violates the School’s Policy for the Prevention of Harassment, Hazing and Bullying, specifically **harassment**.

As a case which involves a finding of **harassment**, I would remind the Board now of the definition of harassment contained section IV. G. in our state mandated Policy:

G.**“Harassment”[[23]](#footnote-23)** means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status disability, sex, sexual orientation, or gender identity, that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating hostile, or offensive environment.

**[NOTE: in cases of harassment related to Race, you should also read the following.**

1. **Racial harassment**, which means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to cultural customs.]

**[NOTE: In cases of harassment on the basis of categories other than category of “race”, or “sexual harassment,” you should also read the following:**

(3) **Harassment of members of other protected categories,** means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived creed, national origin, marital status, disability, sex, sexual orientation, or gender identity and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories.

This appeal hearing is also being held pursuant to Section V.A. of our Procedures for the Prevent of Harassment, Hazing and Bullying, with respect to the “Rights of Accused Students” which provides that

“***any person determined to have engaged in an act(s) of …. Harassment may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district.*“**

Section V.A. further provides that the **standard of review** to be applied by the Board in such an appeal, shall be a “review” of the “record” in order to determine whether the [INSERT SPECIFIC ADMINSTRATOR’S TITLE]’s decision in this case, that **harassment** occurred, and/or any discipline imposed as a consequence, constitutes an “**abuse of discretion.”**

In a Memorandum to the Field, issued by then-Secretary of Education Rebecca Holcombe, dated May 29, 2015, accompanying the announcement of these Procedures and this Appeal process, the Secretary emphasized the following:

It is important to note that the appeal hearing before the school board is not a ‘fact finding’ exercise where the school board hears from witnesses or takes any new evidence. Rather, this is an appeal hearing “on the record” that simply reviews the record from the investigation and adjudication at the school level.

The role of the school board will be to hear any relevant arguments that the school district or parent/eligible student makes, and decide whether the school ‘abused its discretion’ in finding that an act (of harassment) occurred.

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2.

**[TO BE READ ONLY IN THIOSE CASES WHERE THE PARENT ASKED TO RECEIVE A COPY OF THE INVESTIGATIVE REPORT IN ADVANCE OF THE BOARD HEARING**

I would like to confirm at this time that prior to this evening’s hearing you were provided with a copy of the relevant **Investigative Report** supporting the school’s finding, via letter dated [**INSERT DATE OF TRANSMITTAL LETTER**] in advance of tonight’s appeal.

Pursuant to the Procedures, and Federal Privacy law (FERPA) the copy of the report that was previously provided to you was redacted to protect the privacy rights of other students who were involved with the investigation.

Can you please confirm for the Board that you received a redacted copy of that report?

I can also advise you that the Board is also now in possession of the fully unredacted version of the INVESTIGATED REPORT AND DOCUMENTATION and will be reviewing it when considering tonight’s appeal.

In reviewing the Report, and in considering arguments by either Appellant or the Administration regarding the Report’s conclusions, and in order to determine as required whether or not an **abuse of discretion** occurred - the Board will again be guided by the Secretary’s Memo which states:

**Under the ‘abuse of discretion’ standard, school level findings are to be given great weight and school boards are not to ‘retry’ the case.**

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2 (emphasis added).

**Accordingly the Appellant (Student/Parent) will have the burden of persuasion in this matter to demonstrate that the Administrations finding of [harassment] and/or its related disciplinary decisions constitute an “abuse of discretion.”**

I will now turn to an explanation of the order of presentation of arguments that will occur tonight.

As the Administration’s action is being challenged and as Appellant Student/Parent will be making arguments about its decisions, it will assist the Board to hear a description of the Administration’s actions and decisions, before the Board hears and considers the Parents argument and criticisms of those decisions.

Accordingly, we will first hear **the Administration’s recitation of its work – with references to other students and other student information redacted for their privacy.** Please note that the Administration will have an opportunity to make its presentation without interruption.

At the conclusion of the Administration’s presentation, the Board will then have an opportunity to ask clarifying questions of the Administration.

At the conclusion of the Board’s questioning of the Administration, **Student/Parents will then be provided with an opportunity to present Arguments in support of their contention that the Administration’s finding of harassment, (and disciplinary decisions if also appealed) in this matter constitutes an “abuse of discretion.”** Please note that the Student/Parents will have an opportunity to make its presentation without interruption.

At the conclusion of the Student/Parent’s presentation, the Board will have an opportunity to ask questions.

The Administration will then be given an opportunity for final remarks, followed by the Parent’s final remarks. Any further questions at this stage will be allowed ONLY at the discretion of the Board Chair, and with consideration for avoidance of repetition of topics already covered and a focus on topics relevant to the inquiry before the Board.

**At the conclusion of the presentations the Board will, after proper motion, retire to deliberative session where it will consider and decide the matter. Parents will be informed of the decision in writing via a letter of determination.**

[At the Board Chair’s discretion you may offer to contact the parents by phone after the hearing to inform them of the decision, with the letter to arrive thereafter).

Before I continue, do you have any questions at this time about the process?

**Board Chair: “If there are no questions we will proceed now with the Administration’s presentation.”**

[Turn it over to the Administration]

**[BE sure to NOT allow interruptions of the presentation by Appellant(s).** If they attempt to ask questions remind Appellant(s) they will have a chance to make their arguments AFTER the Administration presentation and Board questioning of the Administration is complete.]

(Then once the Administration completes their presentation):

Board Chair: **I would like to invite the Board to ask any questions they may have at this time.**

 (Once Board Finishes their Questions of the Administration):

Board Chair: **If there are no further questions we will proceed now with the Appellant Student/Parent(s)’ Presentation.**

(Once the Appellants finish their presentation):

Board Chair: I **would like to invite the Board to ask any questions they may have of the Appellant(s) at this time.**

(Once the Board Finishes questioning the Appellant(s)):

Board Chair: **I would like to now invite the Administration to make any brief final remarks to the Board**.

[Questions of Administration at this point are up to Board Chair discretion.]

(Once the Administration Finishes final remarks):

Board Chair: **I would like to now invite the Appellant(s) to make any brief final arguments or recommendations to the Board**.

(Once the Appellants finish their Remarks:)

Board Chair:

**At this time the presentation and argument portion of this appeal is now concluded. Appellant will receive written notice of our decision promptly after tonight’s hearing.**

**[AT BOARD CHAIR’s DISCRETION: “Before the Board enters deliberative session I will remind Appellants that I am happy to have them depart for the evening and I will inform them by phone call of the outcome of our deliberations when they are concluded (get their phone number if they want to leave)].**

**I would now invite a motion to enter deliberative session:**

**Once properly in deliberative session…**

**Guidance in Deliberative Session**

The Board should consider the Administration’s decisions regarding a finding of:

Harassment; and/or

Discipline;

…in order to determine whether those administrative decisions constituted “a**buse of discretion.**”

In so doing the Board is advised by AOE to give “**great weight**” to the administration’s decisions and not to “retry” the case.

In so doing they shall review the unredacted Investigative Report and supporting documentation.

The board shall communicate its findings via a letter and MAY contact the family via phone at the conclusion of the hearing to inform them immediately of the decision as well.

***INSTRUCTIONS:***

***This template is designed to help a Board chair conduct an HHB Board Appeal Hearing in a case of substantiated “sexual harassment” (Under VT HHB law only, NOT Title IX).***

**Template for HHB Determination Board Level Appeals**

[Board Chair}: Requests Motion “***to enter into executive session to discuss a confidential student matter.***”

[Once in session:] INTRODUCTIONS: Introduce attendees by name and role.

[EXPLANATION OF THE PROCESS TO APPELLANT PARENT AND APPELLEE ADMINISTRATION BY THE BOARD CHAIR]

BOARD CHAIR: Tonight we are here to consider a student parent’s request for an appeal of a determination reached by [INSERT ADMINISTRATOR NAME] of the [INSERT SCHOOL NAME] that a student engaged in conduct which violates the School’s Policy for the Prevention of Harassment, Hazing and Bullying, specifically **sexual harassment**.

As a case which involves a finding of **sexual harassment**, I would remind the Board now of the definition of harassment contained section IV. G. in our state mandated Policy:

G.**“Harassment”[[24]](#footnote-24)** means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status disability, sex, sexual orientation, or gender identity, that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating hostile, or offensive environment.

**Harassment includes conduct as defined above and may also constitute one or more of the following**:

(1) **Sexual harassment**, as prohibited under Vermont AOE’s Policy[[25]](#footnote-25), means unwelcome conduct of a sexual nature, that includes sexual violence/sexual assault, sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:

(i) Submission to that conduct is made either explicitly or implicitly a term or condition of a student’s education, academic status, or progress; or

(ii) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

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

This appeal hearing is also being held pursuant to Section V.A. of our Procedures for the Prevent of Harassment, Hazing and Bullying, with respect to the “Rights of Accused Students” which provides that

“***any person determined to have engaged in an act(s) of …. (Sexual) harassment may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district.*“**

Section V.A. further provides that the **standard of review** to be applied by the Board in such an appeal, shall be a “review” of the “record” in order to determine whether the [INSERT SPECIFIC ADMINSTRATOR’S TITLE]’s decision in this case, that **sexual harassment** occurred, and/or any discipline imposed as a consequence, constitutes an “**abuse of discretion.”**

In a Memorandum to the Field, issued by then-Secretary of Education Rebecca Holcombe, dated May 29, 2015, accompanying the announcement of these Procedures and this Appeal process, the Secretary emphasized the following:

It is important to note that the appeal hearing before the school board is not a ‘fact finding’ exercise where the school board hears from witnesses or takes any new evidence. Rather, this is an appeal hearing “on the record” that simply reviews the record from the investigation and adjudication at the school level.

The role of the school board will be to hear any relevant arguments that the school district or parent/eligible student makes, and decide whether the school ‘abused its discretion’ in finding that an act (of sexual harassment) occurred.

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2.

**[TO BE READ ONLY IN THIOSE CASES WHERE THE PARENT ASKED TO RECEIVE A COPY OF THE INVESTIGATIVE REPORT IN ADVANCE OF THE BOARD HEARING**

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**Under the ‘abuse of discretion’ standard, school level findings are to be given great weight and school boards are not to ‘retry’ the case.**

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2 (emphasis added).

**Accordingly the Appellant (Student/Parent) will have the burden of persuasion in this matter to demonstrate that the Administrations finding of [sexual harassment] and/or its related disciplinary decisions constitute an “abuse of discretion.”**

I will now turn to an explanation of the order of presentation of arguments that will occur tonight.

As the Administration’s action is being challenged and as Appellant Student/Parent will be making arguments about its decisions, it will assist the Board to hear a description of the Administration’s actions and decisions, before the Board hears and considers the Parents argument and criticisms of those decisions.

Accordingly, we will first hear **the Administration’s recitation of its work – with references to other students and other student information redacted for their privacy.** Please note that the Administration will have an opportunity to make its presentation without interruption.

At the conclusion of the Administration’s presentation, the Board will then have an opportunity to ask clarifying questions of the Administration.

At the conclusion of the Board’s questioning of the Administration, **Student/Parents will then be provided with an opportunity to present Arguments in support of their contention that the Administration’s finding of sexual harassment, (and disciplinary decisions if also appealed) in this matter constitutes an “abuse of discretion.”** Please note that the Student/Parents will have an opportunity to make its presentation without interruption.

At the conclusion of the Student/Parent’s presentation, the Board will have an opportunity to ask questions.

The Administration will then be given an opportunity for final remarks, followed by the Parent’s final remarks. Any further questions at this stage will be allowed ONLY at the discretion of the Board Chair, and with consideration for avoidance of repetition of topics already covered and a focus on topics relevant to the inquiry before the Board.

**At the conclusion of the presentations the Board will, after proper motion, retire to deliberative session where it will consider and decide the matter. Parents will be informed of the decision in writing via a letter of determination.**

[At the Board Chair’s discretion you may offer to contact the parents by phone after the hearing to inform them of the decision, with the letter to arrive thereafter).

Before I continue, do you have any questions at this time about the process?

**Board Chair: “If there are no questions we will proceed now with the Administration’s presentation.”**

[Turn it over to the Administration]

**[BE sure to NOT allow interruptions of the presentation by Appellant(s).** If they attempt to ask questions remind Appellant(s) they will have a chance to make their arguments AFTER the Administration presentation and Board questioning of the Administration is complete.]

(Then once the Administration completes their presentation):

Board Chair: **I would like to invite the Board to ask any questions they may have at this time.**

 (Once Board Finishes their Questions of the Administration):

Board Chair: **If there are no further questions we will proceed now with the Appellant Student/Parent(s)’ Presentation.**

(Once the Appellants finish their presentation):

Board Chair: I **would like to invite the Board to ask any questions they may have of the Appellant(s) at this time.**

(Once the Board Finishes questioning the Appellant(s)):

Board Chair: **I would like to now invite the Administration to make any brief final remarks to the Board**.

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(Once the Administration Finishes final remarks):

Board Chair: **I would like to now invite the Appellant(s) to make any brief final arguments or recommendations to the Board**.

(Once the Appellants finish their Remarks:)

Board Chair:

**At this time the presentation and argument portion of this appeal is now concluded. Appellant will receive written notice of our decision promptly after tonight’s hearing.**

**[AT BOARD CHAIR’s DISCRETION: “Before the Board enters deliberative session I will remind Appellants that I am happy to have them depart for the evening and I will inform them by phone call of the outcome of our deliberations when they are concluded (get their phone number if they want to leave)].**

**I would now invite a motion to enter deliberative session:**

**Once properly in deliberative session…**

**Guidance in Deliberative Session**

The Board should consider the Administration’s decisions regarding a finding of:

Sexual Harassment; and/or

Discipline;

…in order to determine whether those administrative decisions constituted “a**buse of discretion.**”

In so doing the Board is advised by AOE to give “**great weight**” to the administration’s decisions and not to “retry” the case.

In so doing they shall review the unredacted Investigative Report and supporting documentation.

The board shall communicate its findings via a letter and MAY contact the family via phone at the conclusion of the hearing to inform them immediately of the decision as well.

***INSTRUCTIONS:***

***This template is designed to help a Board chair conduct an HHB Board Appeal Hearing in a case of substantiated “hazing.”***

**Template for HHB Determination Board Level Appeals**

[Board Chair}: Requests Motion “***to enter into executive session to discuss a confidential student matter.***”

[Once in session:] INTRODUCTIONS: Introduce attendees by name and role.

[EXPLANATION OF THE PROCESS TO APPELLANT PARENT AND APPELLEE ADMINISTRATION BY THE BOARD CHAIR]

BOARD CHAIR: Tonight we are here to consider a student parent’s request for an appeal of a determination reached by [INSERT ADMINISTRATOR NAME] of the [INSERT SCHOOL NAME] that a student engaged in conduct which violates the School’s Policy for the Prevention of Harassment, Hazing and Bullying, specifically **hazing**.

As a case which involves a finding of **hazing**, I would remind the Board now of the definition of harassment contained section IV. H. in our state mandated Policy:

H. **“Hazing”[[26]](#footnote-26)** means any intentional, knowing or reckless act committed by a student, whether individually or in concert with others, against another student: In connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with the educational institution; and

(1) Which is intended to have the effect of, or should reasonably be expected to have the effect of, endangering the mental or physical health of the student.

Hazing shall not include any activity or conduct that furthers legitimate curricular, extra-curricular, or military training program goals, provided that:

(1) The goals are approved by the educational institution; and

(2) The activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions.

With respect to Hazing, **“Student”** means any person who:

(A) is registered in or in attendance at an educational institution;

(B) has been accepted for admission at the educational institution where the hazing incident occurs; or

(C) intends to attend an educational institution during any of its regular sessions after an official academic break.

This appeal hearing is also being held pursuant to Section V.A. of our Procedures for the Prevent of Harassment, Hazing and Bullying, with respect to the “Rights of Accused Students” which provides that

“***any person determined to have engaged in an act(s) of ….hazing may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district.*“**

Section V.A. further provides that the **standard of review** to be applied by the Board in such an appeal, shall be a “review” of the “record” in order to determine whether the [INSERT SPECIFIC ADMINSTRATOR’S TITLE]’s decision in this case, that **hazing** occurred, and/or any discipline imposed as a consequence, constitutes an “**abuse of discretion.”**

In a Memorandum to the Field, issued by then-Secretary of Education Rebecca Holcombe, dated May 29, 2015, accompanying the announcement of these Procedures and this Appeal process, the Secretary emphasized the following:

It is important to note that the appeal hearing before the school board is not a ‘fact finding’ exercise where the school board hears from witnesses or takes any new evidence. Rather, this is an appeal hearing “on the record” that simply reviews the record from the investigation and adjudication at the school level.

The role of the school board will be to hear any relevant arguments that the school district or parent/eligible student makes, and decide whether the school ‘abused its discretion’ in finding that an act (of hazing) occurred.

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2.

**[TO BE READ ONLY IN THIOSE CASES WHERE THE PARENT ASKED TO RECEIVE A COPY OF THE INVESTIGATIVE REPORT IN ADVANCE OF THE BOARD HEARING**

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**Under the ‘abuse of discretion’ standard, school level findings are to be given great weight and school boards are not to ‘retry’ the case.**

Memorandum, Sec’y Holcombe (May 29, 2015), Page 2 (emphasis added).

**Accordingly the Appellant (Student/Parent) will have the burden of persuasion in this matter to demonstrate that the Administrations finding of [hazing] and/or its related disciplinary decisions constitute an “abuse of discretion.”**

I will now turn to an explanation of the order of presentation of arguments that will occur tonight.

As the Administration’s action is being challenged and as Appellant Student/Parent will be making arguments about its decisions, it will assist the Board to hear a description of the Administration’s actions and decisions, before the Board hears and considers the Parents argument and criticisms of those decisions.

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At the conclusion of the Administration’s presentation, the Board will then have an opportunity to ask clarifying questions of the Administration.

At the conclusion of the Board’s questioning of the Administration, **Student/Parents will then be provided with an opportunity to present Arguments in support of their contention that the Administration’s finding of hazing, (and disciplinary decisions if also appealed) in this matter constitutes an “abuse of discretion.”** Please note that the Student/Parents will have an opportunity to make its presentation without interruption.

At the conclusion of the Student/Parent’s presentation, the Board will have an opportunity to ask questions.

The Administration will then be given an opportunity for final remarks, followed by the Parent’s final remarks. Any further questions at this stage will be allowed ONLY at the discretion of the Board Chair, and with consideration for avoidance of repetition of topics already covered and a focus on topics relevant to the inquiry before the Board.

**At the conclusion of the presentations the Board will, after proper motion, retire to deliberative session where it will consider and decide the matter. Parents will be informed of the decision in writing via a letter of determination.**

[At the Board Chair’s discretion you may offer to contact the parents by phone after the hearing to inform them of the decision, with the letter to arrive thereafter).

Before I continue, do you have any questions at this time about the process?

**Board Chair: “If there are no questions we will proceed now with the Administration’s presentation.”**

[Turn it over to the Administration]

**[BE sure to NOT allow interruptions of the presentation by Appellant(s).** If they attempt to ask questions remind Appellant(s) they will have a chance to make their arguments AFTER the Administration presentation and Board questioning of the Administration is complete.]

(Then once the Administration completes their presentation):

Board Chair: **I would like to invite the Board to ask any questions they may have at this time.**

 (Once Board Finishes their Questions of the Administration):

Board Chair: **If there are no further questions we will proceed now with the Appellant Student/Parent(s)’ Presentation.**

(Once the Appellants finish their presentation):

Board Chair: I **would like to invite the Board to ask any questions they may have of the Appellant(s) at this time.**

(Once the Board Finishes questioning the Appellant(s)):

Board Chair: **I would like to now invite the Administration to make any brief final remarks to the Board**.

[Questions of Administration at this point are up to Board Chair discretion.]

(Once the Administration Finishes final remarks):

Board Chair: **I would like to now invite the Appellant(s) to make any brief final arguments or recommendations to the Board**.

(Once the Appellants finish their Remarks:)

Board Chair:

**At this time the presentation and argument portion of this appeal is now concluded. Appellant will receive written notice of our decision promptly after tonight’s hearing.**

**[AT BOARD CHAIR’s DISCRETION: “Before the Board enters deliberative session I will remind Appellants that I am happy to have them depart for the evening and I will inform them by phone call of the outcome of our deliberations when they are concluded (get their phone number if they want to leave)].**

**I would now invite a motion to enter deliberative session:**

**Once properly in deliberative session…**

**Guidance in Deliberative Session**

The Board should consider the Administration’s decisions regarding a finding of:

Hazing; and/or

Discipline;

…in order to determine whether those administrative decisions constituted “a**buse of discretion.**”

In so doing the Board is advised by AOE to give “**great weight**” to the administration’s decisions and not to “retry” the case.

In so doing they shall review the unredacted Investigative Report and supporting documentation.

The board shall communicate its findings via a letter and MAY contact the family via phone at the conclusion of the hearing to inform them immediately of the decision as well.

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

***To be sent to appellant students only when a finding that they were a target of HHB 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

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. 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-22)
23. **SOURCE:** (VT AOE MODEL) POLICIES ON THE PREVENTION OF HARASSMENT, HAZING AND BULLYING OF STUDENTS, SECTION IV.G. (2015). [↑](#footnote-ref-23)
24. **SOURCE:** (VT AOE MODEL) POLICIES ON THE PREVENTION OF HARASSMENT, HAZING AND BULLYING OF STUDENTS, SECTION IV.G. (2015). [↑](#footnote-ref-24)
25. NOTE: There is a ***different*** and separate definition of Sexual Harassment under Federal Title IX Law (See section F.) which is prohibited separately under the Model Policy for the Prevention of Sexual Harassment as Prohibited by Title IX . [↑](#footnote-ref-25)
26. **SOURCE:** (VT AOE MODEL) POLICIES ON THE PREVENTION OF HARASSMENT, HAZING AND BULLYING OF STUDENTS, SECTION IV.H. (2015). [↑](#footnote-ref-26)