

Designee/Investigator Primer

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1. **Designee Duty to receive complaints of conduct that may constitute harassment, hazing, and/or bullying:** School boards are required to designate annually two or more persons per school campus with the responsibility of receiving complaints on harassment/hazing/bullying. Sources: 16 V.S.A. §570a(a)(7); §570b(7); §570c(7).

ACTION ITEM: Principals/School Administrators will make “Designee” assignments by the start of the school year. Once assigned, Designees are responsible for receiving complaints of HHB Policy violations from any source as detailed below:

Student Report: Any student who believes that s/he has been harassed, hazed and/or bullied under the school’s policy, or who witnesses or has knowledge of conduct that s/he reasonably believes might constitute harassment, hazing and or/bullying, should promptly report the conduct to a designated employee or any other school employee. 2015 AOE MODEL PROCEDURES (I.A.)

School Employee Report: Any school employee who **witnesses** conduct that s/he reasonably believes might constitute harassment, hazing and/or bullying shall take reasonable action to stop the conduct and to prevent its recurrence and immediately report it to a designated employee and immediately complete a Student Conduct Form. 2015 AOE MODEL PROCEDURES (I.B.)

Any school employee **who overhears or directly receives information** about conduct that might constitute harassment, hazing and/or bullying shall immediately report the information to a designated employee and immediately complete a Student Conduct Form. If one of the designated employees is a person alleged to be engaged in the conduct complained of, the incident shall be immediately reported to the other designated employee or the school administrator. 2015 AOE MODEL PROCEDURES (I.B.)

Other Reports: Any other person who witnesses conduct that s/he reasonably believes might constitute harassment, hazing and/or bullying under this policy should promptly report the conduct to a designated employee. Please see the definition of “Notice” as defined in the school’s policy, regarding additional considerations regarding third party reports. 2015 AOE MODEL PROCEDURES (I.C.)

2. **Designee Duty to document oral complaints upon receipt:** Upon notice that harassment, hazing and/or bullying may have occurred the designated employee shall promptly reduce any oral information to writing, including the time, place and nature of the conduct, and the identity of the participants in the complaint. 2015 AOE Model Procedures (II.A.)

ACTION ITEM/ONGOING: To properly respond to notice of HHB violation complaints:

- (1) Be sure to document ALL oral complaints by filling out the appropriate “**Student Conduct Form**” (Pages 6-8), depending upon the author for the form.

3. **Designee Duty to report HHB Policy complaints to school administrator(s):** Promptly inform the school administrator(s) of the HHB Policy complaint.

ACTION ITEM/ONGOING: To properly respond to Notice of HHB violation complaints:

- (1) Promptly provide school administrator/principal with a copy of the “Student Conduct Form.” (Pages 6-8).
- (2) Promptly confer with school administrator/principal as to whether **Interim Measures** are required for the safety of the targeted student pending completion of the HHB Violation investigation with reference to the following Guidance Memorandum (Page 5).

GUIDANCE MEMORANDUM

RE: Duty to Take Appropriate Interim Measures Pending Investigations

Q: What are “Interim Measures?”

A: They are any and all arrangements put in place by a school upon receipt of a complaint of a HHB Policy violation which are instituted in order to provide immediate protections for a complaining student. Interim Measures are typically represented in a document created by the School titled “Safety Plan.”

Q: Are there cases where the school is required to create a Safety Plan?

A: YES. In any case where a targeted Student has (1) suffered physical harm (either from another student (sexual assault or severe physical violence) or (2) is known to be expressing suicidal ideation. In these cases a Safety Plan for that student must be created.¹

Q: Are there cases where Safety Plans are strongly recommended?

A: YES. Where a targeted Student is known to have difficulty accessing the educational programs at school as a result of the inappropriate behavior, a Safety Plan “MUST be considered.”²

Q: If a student alleges he/she has been sexually assaulted by another student can he/she insist on separate classes and/or transportation from the accused?

A: The school MAY decide (but it remains within the school’s discretion) to separate the students immediately in class and during transportation.³ Care should be made in any such arrangements to not impose a burden on the targeted student in these arrangements, while also balancing the offending student’s right to access their education pending the outcome of the investigation.

Q: If the alleged harasser is a teacher, may the student be transferred to a different class?

A: Yes.⁴

Q: What about no contact orders issued by a court?

A: If the order addresses “in school contact” or “all contact” the school should make its best efforts to implement the order. However unless the order names the school directly (which is unlikely unless the school was a party to the court action), however, such compliance is arguably voluntary with respect to the school, and the obligation for compliance with its terms rests with the target of the order (the offending student). In any such case the school should verify the precise terms of the order before taking any actions in reliance upon representations that such an order exists. Knowledge of the order’s terms and of in school student behaviors violating its terms may in some cases obligate reports to DCF or law enforcement.

¹ 2015 AOE Model Procedures (III.C.)

² Id.

³ Id.

⁴ Id.

STUDENT CONDUCT FORM (TO BE COMPLETED BY STAFF)

DISTRICT EMPLOYEE AUTHOR: _____

(Direct witness? Y N).

OR - STUDENT/ADULT REPORTER: _____

IDENTITY OF ALLEGED STUDENT OFFENDER: _____

DATE OF INCIDENT WITNESSED: **Date:** _____ **Time:** _____

DATE OF REPORT BY STUDENT or THIRD PARTY: **Date:** _____ **Time:** _____

DESCRIPTION OF CONDUCT REPORTED: _____

STUDENT WITNESSES (if any): _____

DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

STUDENTS INTERVIEWED BY EMPLOYEE AUTHOR (if any): _____

INITIAL ACTIONS BY EMPLOYEE AUTHOR IF WITNESS TO EVENTS:

NEXT STEPS TO BE TAKEN BY EMPLOYEE AUTHOR: _____

INCIDENT REPORTED TO DESIGNATED EMPLOYEE? YES NO

If no, explain in detail WHY not reported to DE:

**IF REPORTED TO DE/DATE & TIME INCIDENT WAS REPORTED TO C-1
DESIGNEE: DATE _____ /TIME _____**

Signature of Designee acknowledging receipt: _____

STUDENT CONDUCT FORM (TO BE COMPLETED BY DESIGNATED EMPLOYEE)

DESIGNATED EMPLOYEE AUTHOR: _____

(WITNESS INCIDENT? Y N).

OR OF STUDENT/ADULT/EMPLOYEE REPORTER: _____

(WITNESS INCIDENT? Y N)

IDENTITY OF ALLEGED STUDENT OFFENDER: _____

DATE OF INCIDENT WITNESSED: Date: _____ Time: _____

OR DATE OF REPORT BY STUDENT or STAFF /THIRD PARTY:

Date: _____ Time: _____

DESCRIPTION OF CONDUCT REPORTED: _____

STUDENT WITNESSES (if any): _____

DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

INITIAL ACTIONS TAKEN BY DE IF WITNESS TO EVENTS:

INCIDENT REPORTED TO BUILDING ADMINISTRATOR? YES NO

If no, explain in detail WHY not reported to BA:

DATE & TIME INCIDENT REPORTED BY DE TO BA: DATE TIME

Signature of School Administrator acknowledging receipt: _____

Date: _____

STUDENT CONDUCT FORM (TO BE COMPLETED BY SCHOOL ADMINISTRATOR)

SCHOOL ADMINISTRATOR AUTHOR: _____

(WITNESS INCIDENT? Y N)

OR OF STUDENT/ADULT/EMPLOYEE REPORTER: _____

IDENTITY OF ALLEGED STUDENT OFFENDER: _____

IF WITNESSED/DATE OF INCIDENT: **Date:** _____ **Time:** _____

OR DATE OF REPORT BY STUDENT or STAFF /THIRD PARTY:

 Date: _____ **Time:** _____

DESCRIPTION OF CONDUCT REPORTED: _____

STUDENT WITNESSES (if any): _____

DISTRICT EMPLOYEE WITNESSES (IF ANY): _____

INITIAL ACTIONS TAKEN BY SA -IF WITNESS TO EVENTS:

DETERMINATION BY SA THAT INFO IS CONDUCT WHICH MAY CONSTITUTE HHB:

YES: NO: INSERT EXPLANATION FOR BOTH: (Use back of form if needed)

Signature of School Administrator: _____

(Date of determination): _____

Assignment of Investigator: _____

Date/Time of assignment: _____

Date Investigation Launched: (NO later than 1 day from Notice to DE: _____

Copies of Policy and Procedures Sent to: _____

Complainant Parent: _____

Accused: _____

4. **School Administrator Duty to Timely Initiate Investigation:** Unless special circumstances are present and documented, such as reports to the Department for Children and Families (“DCF”) or the police, the **school administrator** shall, no later than one school day after **NOTICE to a designated employee**, initiate or cause to be initiated, an investigation of the allegations, which the school administrator **reasonably believes may constitute harassment, hazing, bullying or retaliation**. 2015 AOE Model Procedures (III.A.)

ACTION ITEM/ONGOING: Upon receipt of information of student conduct which the Administrator reasonably believes may constitute a violation of the HHB Policy, the Administrator shall:

- (1) initiate or cause to be initiated an investigation of the allegations within one school day of “notice” to the designee of that information;
- (2) assign a person to conduct the investigation; nothing herein shall be construed to preclude the school administrator from assigning himself/herself or a designated employee as the investigator. NO person who is the subject of a complaint shall conduct such an investigation. 2015 AOE Model Procedures (III.B.)
- (3) if an investigation cannot be commenced within one school day, due to special circumstances, such as reports to the Department for Children and Families or the police, either the Designee, the Investigator or the School Administrator⁵ shall nevertheless notify the parents of the targeted and accused student(s) in writing to document the existence of those circumstances, the reason for the delay, and the anticipated commencement date. (see sample letters page 10-11)

⁵ The Model Procedures do not formally require notice of a delay and therefore there is no assignment of duty within the procedures to a particular title.

DRAFT LETTER ANNOUNCING DELAY IN STARTING HHB / RETALIATION INVESTIGATION

NOTE: To be used to announce investigation and that there will be a delay in initiation given special, documented circumstances. Once investigation commences, the DRAFT announcement of HHB or Retaliation investigation letter should then be sent to both parties' parents.

TO: Complainant Student/Parent(s)

RE: Announcing Special Circumstances Delaying Initiation of Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have been subjected to inappropriate student conduct which he/she reasonably believes may constitute harassment, hazing, bullying or retaliation. I am enclosing copies of both [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students for your information. Under the Procedures [INSERT SCHOOL NAME] is required to initiate an investigation of those allegations within one school day of its receiving that information, except where special circumstances exist. (Procedures, Section III.A.)

I am providing written notification to you that special circumstances exist in this case *[OPTIONAL: "whereby ..." (INSERT BRIEF EXPLANATION OF DELAY TO THE EXTENT POSSIBLE WITHOUT VIOLATING OTHER STUDENT PRIVACY RIGHTS, i.e., investigator absence/illness, student witness availability, school activities necessitating student absences from campus, government agency or police directives received by school)]* such that the school will not be able to initiate the investigation within that time limit.

You will receive written confirmation when the investigation has in fact commenced, which we anticipate will be no later than [INSERT DATE].

Please feel free to contact me with any questions.

Signed,

School Administrator /Designee/Investigator (Not explicitly assigned by procedures)

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

DRAFT LETTER ANNOUNCING DELAY IN STARTING HHB/RETALIATION INVESTIGATION

NOTE: To be used to announce investigation and that there will be a delay in initiation given special, documented circumstances. Once investigation commences, the DRAFT announcement of HHB or Retaliation investigation letter should then be sent to both parties' parents.

TO: Accused Student/Parent(s)

RE: Announcing Special Circumstances Delaying Initiation of Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have engaged in inappropriate student conduct which he/she reasonably believes may constitute harassment, hazing, bullying or retaliation. I am enclosing copies of both [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students for your information. Under the Procedures [INSERT THE SCHOOL NAME] is required to initiate an investigation of those allegations within one school day of receipt of that information, except where special circumstances exist. (Procedures, Section III.A.)

I am providing written notification to you that special circumstances exist in this case [***OPTIONAL: "whereby ..." (INSERT BRIEF EXPLANATION OF DELAY TO THE EXTENT POSSIBLE WITHOUT VIOLATING OTHER STUDENT PRIVACY RIGHTS, i.e., investigator absence/illness, student witness availability, school activities necessitating student absences from campus, government agency or police directives received by school)***] such that the school will not be able to initiate the investigation within that time limit.

You will receive written confirmation when the investigation has in fact commenced, which we anticipate will be no later than [INSERT DATE].

Please feel free to contact me with any questions.

Signed,

School Administrator/Designee/Investigator (Not explicitly assigned by procedures)

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

5. **Duty to Communicate Commencement of Investigation and to Distribute Policies and Procedures Upon Initiation of Investigation:** The **designated employee** shall notify in writing both the complainant and accused individual (or if either is a minor inform his/her respective parent or guardian) that:

- (1) an investigation has been initiated;
- (2) retaliation is prohibited;
- (3) all parties have confidentiality rights;
- (4) they will be informed in writing of the outcome of the investigation; and
- (5) provide a copy of the policy and investigative procedures to both complainant student/accused student. SOURCES: 16 V.S.A. §570f(a)(1); 2015 AOE Procedures (II.B.i).

ACTION ITEM/AUGUST: Before the start of the school year Designees should Prepare “Draft” notification letters for the purpose of announcing the initiation of investigations and related mandatory communications. These should be maintained and updated throughout the year. (Sample Draft letters are provided pages 13-16.)

FORM LETTER ANNOUNCING COMMENCEMENT OF HHB INVESTIGATION

TO: Complainant Student/Parent(s)

RE: Announcement of Commencement of HHB Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have been subjected to inappropriate student conduct which he/she reasonably believes may constitute harassment, hazing and/or bullying.

I am providing you with written notice that the [INSERT THE SCHOOL NAME] has initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students to ascertain whether or not the alleged behaviors occurred - and if so – whether they violated the policy. (Procedures, Section II.B.) I am enclosing a copy of both the policy and the related procedures for your information. I would encourage you to please review these with your (son/daughter).

Please be aware that the investigation is confidential. (Procedures, Section VI.) This is for the rights of all involved. Accordingly, I may not disclose details of the alleged incidents to you to the extent they involve other students.

Please know that your child has a right to be free of any retaliation from students or faculty as a result of the filing of this complaint and/or participation in this investigation. (Policy, Section IV. N.) Accordingly, if at any time you believe that your child has been subject to retaliation by either students or staff I would encourage you to contact me immediately so that we may take prompt, appropriate action.

You will receive written notification of the completion of our investigation and whether any alleged policy violation(s) were or were not substantiated. (Procedures, Section III.H.) In the meantime, please feel free to contact me regarding any questions you may have about our policies/procedures or the investigation.

Thank you for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designated Employee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

FORM LETTER ANNOUNCING COMMENCEMENT OF HHB INVESTIGATION

TO: Accused Student/Parent(s)

RE: Announcement of Commencement of Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have engaged in inappropriate student conduct which he/she reasonably believes may constitute harassment, hazing and/or bullying.

I am providing you with written notice that the [INSERT THE SCHOOL NAME] has initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students to ascertain whether or not the alleged behaviors occurred - and if so – whether they violated the policy. (Procedures, Section II.B.) I am enclosing a copy of both the policy and the related procedures for your information. I would encourage you to please review these with your (son/daughter).

Please be aware that the investigation is confidential. (Procedures, Section VI.) This is for the rights of all involved. Accordingly, I may not disclose details of the alleged incidents to you to the extent they involve other students.

In addition, please be aware that all students connected with this investigation, as well as any other students who cooperate in this investigation – including your child - have a right to be free from and are protected from any retaliation as a result of the filing of this complaint and/or participation in this investigation. Accordingly, if at any time you or your child believe that he/she has been subject to retaliation by either students or faculty I would encourage you to contact me immediately so that we may take prompt, appropriate action.

You will receive written notification of the completion of our investigation and whether any alleged policy violation(s) were or were not substantiated. (Procedures Section III.H.) In the meantime, please feel free to contact me regarding any questions you may have about our policies/procedures or the investigation.

Thank you for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designated Employee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

FORM LETTER ANNOUNCING RETALIATION INVESTIGATION

TO: Complainant Student/Parent(s)

RE: Announcement of Commencement of Retaliation Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have been subjected to inappropriate student conduct which he/she reasonably believes may constitute retaliation in violation of the Policy for the Prevention of Harassment, Hazing and Bullying of Students.

I am therefore providing you with written notice that the [INSERT THE SCHOOL NAME] has initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students to ascertain whether or not the alleged behaviors occurred - and if so – whether they violated the policy. (Procedures, Section II.B.) I am enclosing a copy of policy and related procedures for your information. I would encourage you to please review these policies and procedures with your (son/daughter).

Please be aware that the investigation is confidential. (Procedures, Section VI.) This is for the rights of all involved. Accordingly, I may not disclose details of the alleged incidents to you to the extent they involve other students.

Please also know that your child has a right to be free of any additional retaliation from students or faculty as a result of the filing of this complaint and participation in this investigation. (Policy, Section IV. N.) Accordingly, if at any time you believe that your child has been subject to further retaliation by either students or staff I would encourage you to contact me immediately so that we may take prompt, appropriate action.

You will receive written notification of the completion of our investigation and whether any alleged policy violation(s) were or were not substantiated. (Procedures, Section III.H.) In the meantime, please feel free to contact me regarding any questions you may have about our policies/procedures or the investigation.

Thank you for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designated Employee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

FORM LETTER ANNOUNCING RETALIATION INVESTIGATION

TO: Accused Student/Parent(s)

RE: Announcement of Commencement of Retaliation Investigation

On (insert applicable date) [INSERT SCHOOL ADMINISTRATOR'S NAME] determined the school was in possession of information which alleges your child may have engaged in inappropriate student conduct which he/she reasonably believes may constitute retaliation in violation of the Policy for the Prevention of Harassment, Hazing and Bullying of Students.

I am therefore providing you with written notice that the [INSERT THE SCHOOL NAME] has initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students to ascertain whether or not the alleged behaviors occurred - and if so – whether they violated the policy. (Procedures, Section II.B.) I am enclosing a copy of both the policy and the related procedures for your information. I would encourage you to please review these policies and procedures with your (son/daughter).

Please be aware that the investigation is confidential. (Procedures, Section VI.) This is for the rights of all involved. Accordingly, I may not disclose details of the alleged incidents to you to the extent they involve other students.

In addition, please be aware that all students connected with this investigation – including your child - have a right to be free from and are protected from any additional retaliation as a result of the filing of this complaint and participation in this investigation. Accordingly, if at any time you or your child believe that they have been subject to further retaliation by either students or faculty I would encourage you to contact me immediately so that we may take prompt, appropriate action.

You will receive written notification of the completion of our investigation and whether any alleged policy violation(s) were or were not substantiated. (Procedures, Section III.H.) In the meantime, please feel free to contact me regarding any questions you may have about our policies/procedures or the investigation.

Thank you for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designated Employee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

6. **Investigator Duty to Investigate / Conduct Interviews:** In the course of conducting an investigation, the Investigator should conduct interviews of witnesses who may have relevant information (students, staff and teachers). In so doing, the following should be considered:

General Guidance for All Interviews

- (1) Make sure special needs are accommodated.
- (2) Interview each witness privately, and if at all possible have at least one other adult in the room whose sole job is to support student.
- (3) Take good notes or consider having a “note taker” present so you can focus on the information you are learning. *Strongly recommended.*
- (4) Explain the purpose of the interview is to find out what happened and make sure all students feel safe, and can access their education.
- (5) Explain that nothing has been decided and will not be decided until all relevant information has been reviewed.
- (6) Explain that his/her role in this process is confidential and for that reason he/she must not speak to other students about the investigation, but he/she can talk to his/her parents.
- (7) Explain rights against retaliation.

Targeted Student Interviews

*It is best to interview the alleged **victim first** so that you have as clear a sense as possible of what is alleged so that you may attempt to seek collaborating evidence from other student and staff witnesses, and so that you may give the accused student the best opportunity to respond to the accusations in his/her interview.*

- (1) Ask if there is any reason they think you cannot be impartial;
- (2) Ask them to describe their relationship/prior history to alleged perpetrator;
- (3) Ask them to describe in detail what they saw/heard;
- (4) Ask them to identify anyone else who witnessed the events;
- (5) Ask if they have in their possession physical evidence (Texts/emails/posts).
- (6) Ask them to write out his/her statement in their words. (Or if they are not able to, write out a summary of what they tell you and give them an opportunity to review, correct or add to it, and sign that summary).

Accused Student Interviews

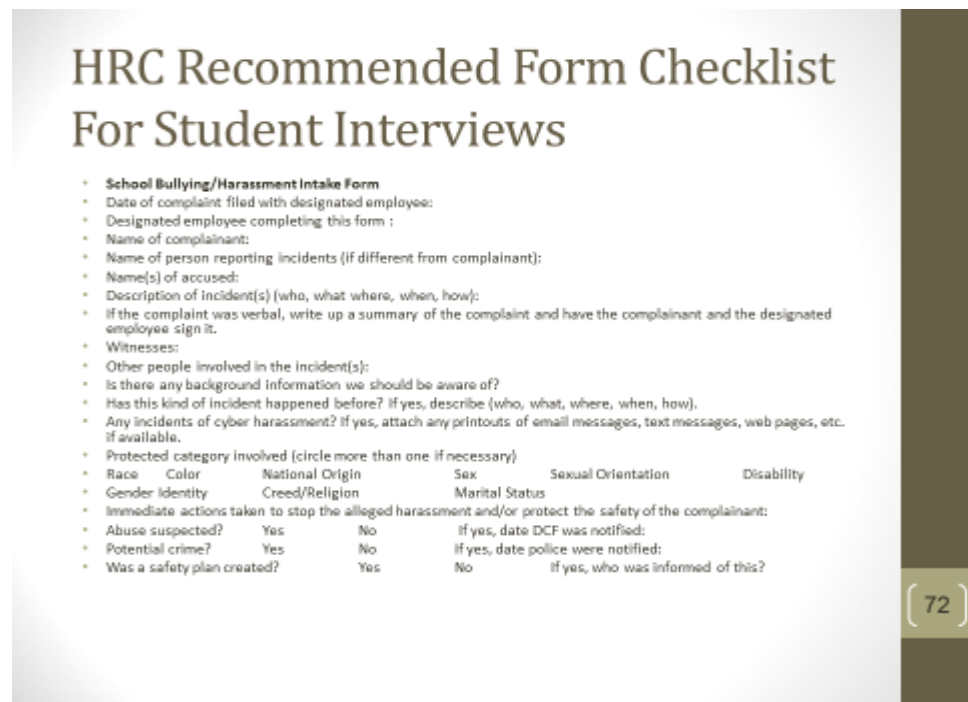
- (1) Ask if there is any reason they think you cannot be impartial;
- (2) Ask them to describe their relationship/prior history to targeted student;
- (3) Ask them to provide their side of the story;
- (4) Ask them for witnesses that will support their explanation;
- (5) Ask if they have in their possession physical evidence

(Texts/emails/posts);

- (6) Ask them to write out his/her statement in his/her words. (Or if they are not able to, write a summary of what they tell you and give them an opportunity to review, correct or add to it, and sign that summary).

Third Party Interviews/(Students/Staff/Teachers)

- (1) Ask them to describe their relationship/prior history to targeted student/alleged perpetrator (bias);
- (2) Ask them to describe in detail what they saw/heard;
- (3) Ask if they can identify other witnesses;
- (4) Ask if they have in their possession physical evidence (Texts/emails/posts).
- (5) Be sure to inquire targeted students access to education and academic performance or demeanor (changes over time).



7. **Investigator Duty to Investigate/Other Investigation Duties:** Investigators shall, in addition to conducting witness interviews be sure to perform the following tasks in the performance of their investigation:

- (1) **Review student’s discipline** record to check for patterns of behavior (repetition may constitute bullying; multiple instances may create a “hostile environment”);
- (2) **Review Targeted Student’s academic/grade/progress reports** to assess whether or not changes in academic performance coincide with targeting by inappropriate conduct;
- (3) **Maintain copies of all documents reviewed AND created** in the course of the investigation in an Investigation File along with the Investigative Report. Copies of all Investigation Files/Reports shall be forwarded in full to Central Office at year’s end.

8. **Investigator Duty to timely complete investigation:** Investigators shall, **no later than five school days from the filing of the complaint with the designated employee**, unless special circumstances are present and documented, submit a written initial determination to the school administrator as to whether the HHB policy was violated by the alleged student’s conduct. 2015 AOE Model Procedures (III.F.)

ACTION ITEM/ONGOING: Upon receipt of information of student conduct which the Designee reasonably believes may constitute a violation of the HHB Policy the Designee shall:

- (1) Complete an investigation of the allegations within five school days of “notice” of that information;
- (2) If an investigation cannot be completed within five school days, due to special circumstances, such as reports to the Department for Children and Families or the police, the Designee shall nevertheless notify the parents of the targeted and accused students in writing to document the existence of those circumstances, the reason for the delay, and the anticipated completion date. (See Sample Letters page 20-21).

DRAFT LETTER ANNOUNCING DELAY TO TARGETED STUDENT IN COMPLETING HHB OR RETALIATION INVESTIGATION

NOTE: To be used to provide notice that there will be a delay in completion of HHB or Retaliation investigation, given special, documented circumstances. Once investigation is completed, the DRAFT announcement of HHB or Retaliation completion investigation letter(s) should then be sent to both parties' parents.

TO: Complainant Student/Parent(s)

RE: Announcing Special Circumstances Delaying Completion of Investigation

On (INSERT DATE OF ORIGINAL ANNOUNCEMENT LETTER) you were provided with written notice that the [INSERT THE SCHOOL NAME] had initiated an investigation under [INSERT THE SCHOOL NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students. Under the accompanying Procedures the school is required to complete its investigation within five school days unless special circumstances are present and documented. (Procedures, Section III.A.)

I am therefore providing you with written notification that special circumstances exist in this case *[OPTIONAL: "whereby ..." (INSERT BRIEF EXPLANATION OF DELAY TO THE EXTENT POSSIBLE WITHOUT VIOLATING OTHER STUDENT PRIVACY RIGHTS, i.e., investigator absence/illness, student witness availability, school activities necessitating student absences from campus, government agency or police directives received by school)]* such that the school will not be able to complete the investigation within that time limit.

You will receive written confirmation when the investigation has in fact been completed, which we anticipate will be no later than [INSERT DATE].

Please feel free to contact me with any questions.

Signed,

School Administrator/Investigator/Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

DRAFT LETTER ANNOUNCING DELAY TO ACCUSED STUDENT IN COMPLETING HHB OR RETALIATION INVESTIGATION

NOTE: To be used to provide notice that there will be a delay in completion of HHB or Retaliation investigation, given special, documented circumstances. Once investigation is completed, the DRAFT announcement of HHB or Retaliation completion investigation letter(s) should then be sent to both parties' parents.

TO: Accused Student/Parent(s)

RE: Announcing Special Circumstances Delaying Completion of Investigation

On (INSERT DATE OF ORIGINAL ANNOUNCEMENT LETTER) you were provided with written notice that the [INSERT THE SCHOOL NAME] had initiated an investigation under [INSERT THE SCHOOL NAME] Policy for the Prevention of Harassment, Hazing and Bullying of Students and accompanying Procedures on the Prevention of Harassment, Hazing and Bullying of Students. Under the accompanying Procedures the school is required to complete its investigation no later than five school days from the filing of the complaint with the school, unless special circumstances are present and documented. (Procedures, Section III.A.)

I am providing written notification to you that special circumstances exist in this case [*OPTIONAL: "whereby ..." (INSERT BRIEF EXPLANATION OF DELAY TO THE EXTENT POSSIBLE WITHOUT VIOLATING OTHER STUDENT PRIVACY RIGHTS, i.e., investigator absence/illness, student witness availability, school activities necessitating student absences from campus, government agency or police directives received by school)*] such that the school will not be able to complete the investigation within that time limit.

You will receive written confirmation when the investigation has in fact been completed, which we anticipate will be no later than [INSERT DATE].

Please feel free to contact me with any questions.

Signed,

School Administrator/Investigator/Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

9. **Duty to Prepare Investigation Report:** A written investigation report prepared by the Investigator is required. The preparation of the report can serve to assist the investigator to review and weight the evidence, consider the policy definitional requirements, and document steps taken in pursuit of the investigation. It also serves as a written record supporting the decisions made by the investigator regarding both the facts as found by the investigator to be more likely than not to be true, and the application of the policy to those facts with respect to policy violations conclusions. The Report is a confidential student record. See Guidance Memorandum (Page 23).

Essential Elements of Report

- (1) Preserves all evidence, and all decisions made in course of investigation.
- (2) Is maintained with all other documents used in investigation and forwarded to the Central Office at the conclusion of the school year.
- (3) States investigator's conclusion as to (a) whether alleged conduct occurred and (b) whether it constituted a violation of harassment, hazing and/or bullying policies.

Investigative Report – Recommended Outline

- (1) **Detail information reported/collected/reviewed leading to school administrator's decision to initiate investigation.** Be sure to attach copies of all completed Student Conduct Forms and notes and documentation of any follow up activities. Be sure to attach copies of investigation announcement / delay / completion letters. Detail in this section all relevant dates with reference to supporting documentation, i.e. conduct report forms, dates information relayed to designee, to school administrator, date investigation initiated, reported to families, dates of delay letters, dates of initial determination reached by investigation, date of letter announcing decision to families.
- (2) **Repeat school policy definitions** (harassment/hazing and/or bullying) which were considered.
- (3) **List Each Interview Conducted** By Date, Time, Location, Persons Present, Facts Stated By Witness.
- (4) **List Facts and Conclusions Found More Likely Than Not to Be TRUE –** Explain any essential disputed facts which required the investigator to make a finding;
- (5) **Itemize Policy Conclusions** – State findings and reasoning for same. IE: “The behavior was harassment because (insert reasoning).” (See Guidance Memorandum, Page 23)
- (6) **Recommendations** – State recommendations for sanctions to prevent reoccurrence and other next steps. (See Section IV. “Responding to Substantiated Claims” in Model AOE Policies or School Policies – once adopted - for Guidance).

Attach all documents used and considered in the process/investigations

GUIDANCE MEMORANDUM

RE: Reaching Conclusions Regarding Policy Violations / Standard Used to Assess Conduct

Q: **Once I have reached findings of fact in my investigative report, how do I decide whether or not the facts support a finding that the policy was violated?**

A: In determining whether the conduct constitutes a violation of the policy, the investigator shall review the definition of harassment/hazing/bullying and consider the following with respect to the facts as found by the investigator:

- (1) All relevant facts and surrounding circumstances⁶;
- (2) The nature of the behavior⁷;
- (3) Past incidents or past or continuing patterns of behavior⁸;
- (4) The relationships between the parties involved⁹;
- (5) The context in which the alleged incidents occurred¹⁰;
- (6) The impact of relevant off-campus conduct on the school environment where either:
 - (a) Direct harm to the welfare of the school can be demonstrated;
 - (b) OR the off-campus conduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs¹¹.

⁶ 2015 AOE Model Procedure III.E.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

GUIDANCE MEMORANDUM

RE: Report Disclosure Guidance

Q: Who can see my Investigative Report?

A: The report, when referencing student conduct, is a student record and therefore confidential.

Q: Does the fact that it is confidential mean that no Student/Parent may ever see it?

A: **Not necessarily.** For example, any documentation reviewed and created by the Investigator, including the Investigation Report, may be sought by an Accused Student/Appellant Parent in the context of a Board Appeal of a finding of a HHB policy violation or imposition of discipline related to such finding. Such requests shall be directed by the Designee to the School Administrator/Principal for consideration and handling. (In such case if the document cannot be redacted sufficiently to protect the Targeted Student's identity, the request may require consent of the Targeted Student's family before production, which may or may not be forthcoming).

Q: Is there any other way a Parent might eventually see my report?

A: Yes. It may be made available to investigators in the context of a review conducted by either an Independent Review, or investigations of harassment conducted by the Vermont Human Rights Commission or U.S. Dept. of Education Office of Civil Rights. Once obtained by any of these government bodies, it may be the subject of a Freedom of Information Act request for information. It may also be subject to a request for information via warrant in a criminal proceeding, or via subpoena in a civil litigation matter.

10. **Designee Duty to communicate results of investigation:** The **designated employee** shall notify in writing both the complainant and accused student (or if either is a minor inform his/her respective parent or guardian):

- (1) The investigation has been completed (notice must be sent within five days of completion);
 - (2) Whether or not the investigation concluded that a policy violation occurred (and which policy term was violated, i.e. harassment, hazing and/or bullying);
 - (3) That federal privacy law prevents disclosure of any discipline imposed as a result of the investigation;
- SOURCE: 2015 AOE Model Procedures Section III.H.

LATE SUMMER/ACTION ITEM: Designees should have draft/form letters on file to be used for the above referenced communications at the conclusion of investigations. Sample drafts are provided on pages 27-35.

11. **Designee Duty to communicate appeal rights to complainant student (or if minor his/her parents):** When announcing the completion of the investigation and its conclusions, the **designated employee** shall also notify the complainant (or if a minor inform his/her respective parent or guardian) in writing of his/her rights to:

- (1) Seek an internal review by the school of its initial determination as to whether harassment occurred, and instructions on how to pursue this option¹²; or
- (2) an Independent Review of (i) the school's determination as to whether harassment occurred; or (ii) although a determination was made that harassment indeed occurred a review of the school's response to that harassment to see if it was inadequate to correct the problem; and that in either case the review will be conducted by an investigator to be selected by the school from a list of Independent Reviewers maintained by the Agency of Education in conjunction with the Vermont Human Rights Commission, and instructions on how to pursue this option¹³;
- (3) at any time file complaints of harassment with either the Vermont Human Rights Commission and/or the U.S. Department of Education's Office of Civil Rights (with contact information to be provided)¹⁴;
- (4) That a student may seek any or all of the above forms of review/appeal.

LATE SUMMER/ACTION ITEM: Designees should have draft/form letters on

¹² 2015 AOE Model Procedures Section III.H.ii.

¹³ Id.

¹⁴ Id.

file to be used for the above referenced communications at the conclusion of investigations. Sample drafts are provided on the pages 27-35.

12. **Designee Duty to communicate appeal rights to accused student/parents:** When announcing the completion of the investigation and its conclusions, the designated employee/investigator shall also notify the accused student (or if a minor inform his/her respective parent or guardian) in writing of his/her rights to:

- (1) appeal directly to the school board the determination that they have engaged in an act(s) of harassment, hazing and/or bullying and/or any related disciplinary action(s) to be taken¹⁵.

ACTION ITEM: Designees have draft/form letters on file to be used for the above referenced communications at the conclusion of investigations. Sample drafts are provided on the following pages 27-35.

¹⁵ 2015 AOE Model Procedures Section III.H.iii.

FORM LETTER ANNOUNCING NO STUDENT CONDUCT POLICY VIOLATION (HHB or OTHERWISE)

TO: Complainant Student/Parent(s)

On [Insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related Procedures.

I write today to report the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 10 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation)] with a finding of **no substantiation of a violation of the school’s aforementioned policy.** (Procedures, Section III.H.)

Please be advised that all persons who participated in this investigation continue to have the right to be free from any acts of retaliation against them stemming from that participation.

Please be advised that in cases of alleged harassment you are entitled to an Internal Review of our investigations’ conclusions regarding whether harassment occurred. (Procedures, Section V.A.) Such review shall be completed within thirty days. You can also seek an Independent Review by an investigator selected by the school from a roster of investigators maintained by the Vermont Agency of Education in conjunction with the Vermont Human Rights Commission of our investigation’s conclusions regarding whether harassment occurred. (Procedures, Section V.B.) If you wish to pursue one - or both - of these options please contact our Superintendent of Schools at [INSERT ADDRESS]. In the case of an independent review please submit your request in writing and no later than (insert date thirty days from the date of this letter). (NOTE: **It is recommended that schools amend the procedures to explicitly provide in cases of an internal review a similar requirement for a time limit for the parent to review (30 days is appropriate), and that the request be in writing. If you have done so then you can omit the limiting phrase in the prior sentence “*In the case of an independent review*”**).

You may also refer complaints regarding incidents of alleged harassment to the Vermont Human Rights Commission or the U.S. Department of Education Office of Civil Rights division for review. The contact information for both entities are listed in Procedures Section V.C. (Enclosed)

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator’s Investigative File

DRAFT LETTER ANNOUNCING NO STUDENT CONDUCT POLICY VIOLATION (HHB or OTHERWISE)

TO: Accused Student/Parent(s)

On [insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT THE SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related Procedures.

I write today to report that the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 11 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation)] with a finding of **no substantiation of a violation of the school’s aforementioned policy.** (Procedures, Section III.H.)

Please be advised that all persons who participated in this investigation continue to have the right to be free from any acts of retaliation against them stemming from that participation.

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

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator’s Investigative File

DRAFT LETTER ANNOUNCING STUDENT CODE OF CONDUCT VIOLATION, BUT NOT HHB POLICY

TO: Complainant Student/Parent(s)

On [Insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related Procedures.

I write today to report the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 10 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation] and concluded that although inappropriate conduct was found to have occurred, there was **no substantiation of a violation of the school’s aforementioned policy.**

Although federal privacy law prevents me from discussing whether disciplinary action has been taken to address the inappropriate conduct found to have occurred and committed by other student(s), I can tell you we pursue prompt and reasonable remedial actions designed to prevent a reoccurrence of behaviors inconsistent with a positive, safe and inclusive school environment.

Please also be advised that all persons who participated in this investigation continue to have the right to be free from any acts of retaliation against them stemming from that participation.

Please be advised that in cases of alleged harassment you are entitled to an Internal Review of our investigations’ conclusions regarding whether harassment occurred. (Procedures, Section V.A.) Such review shall be completed within thirty days. You can also seek an Independent Review by an investigator selected by the school from a roster of investigators maintained by the Vermont Agency of Education in conjunction with the Vermont Human Rights Commission of our investigation’s conclusions regarding whether harassment occurred. (Procedures, Section V.B.) If you wish to pursue one - or both - of these options please contact our Superintendent of Schools at [INSERT ADDRESS]. In the case of an independent review please submit your request in writing and no later than (insert date thirty days from the date of this letter). (NOTE: **It is recommended that schools amend the procedures to explicitly provide in cases of an internal review a similar time limit for the parent to review (30 days is appropriate), and that the request be in writing. If you have done so then you can omit the limiting phrase in the prior sentence: “*In the case of an independent review*”**).

You may also refer complaints regarding incidents of alleged harassment to the Vermont Human Rights Commission or the U.S. Department of Education Office of Civil Rights division for review. The contact information for both entities are listed in Procedures Section V.C. (Enclosed)

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

DRAFT LETTER ANNOUNCING STUDENT CODE OF CONDUCT VIOLATION, BUT NOT HHB POLICY

TO: Accused Student/Parent(s)

On [insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related Procedures.

I write today to report the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 11 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation] and concluded that although there was no substantiation of a violation of the school’s aforementioned policy, inappropriate conduct violating the school’s (insert specific reference to general code of conduct violated) was found to have occurred.

As a consequence, your child (will serve/be required to engage in) [ANNOUNCE DISCIPLINE FOR OTHER CODE OF CONDUCT VIOLATIONS TO THE EXTENT THEY ARE TO BE IMPOSED.] [IN CASES OF OUT OF SCHOOL SUSPENSION ANNOUNCE ANY RE-ENTRY MEETING TO BE HELD BY DATE AND TIME IF APPROPRIATE.]

[WHERE THE SCHOOL ADMINISTRATOR RECOMMENDS DISCIPLINE FOR MORE THAN TEN DAYS SUSPENSION OR EXPULSION, INSERT LANGUAGE DETAILING THEIR RIGHT TO ATTEND BOARD MEETING AND RELATED PROCESS HERE WITH REFERENCE TO RIGHTS TO BRING LEGAL COUNSEL, QUESTION WITNESSES, ETC].

Please be advised that all persons who participated in this investigation continue to have the right to be free from any acts of retaliation against them stemming from that participation.

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator’s Investigative File

DRAFT LETTER ANNOUNCING VIOLATION OF HHB POLICY OR RETALIATION

TO: Complainant Student/Parent(s)

On [Insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related Procedures.

I write today to report the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 10 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation] with a finding of **substantiation of a violation of the school’s aforementioned policy**, with respect to (INSERT ALL THAT APPLY: “harassment”/”hazing”/”bullying”/”retaliation”).

Although Federal privacy law prevents me from discussing whether disciplinary action has been taken in this matter with respect to other students, (Procedures, Section III.H.I.3), I can tell you we are mindful of our obligation to take prompt and reasonable remedial actions to prevent a reoccurrence of the offending conduct, and to remedy its effects on the victim. We therefore have taken and will take steps consistent with this obligation as outlined in Section IV., Procedures on the Prevention of Harassment, Hazing and Bullying, subject to any appeal rights that the offending student may choose to exercise.

Please be advised that in cases of alleged harassment you are entitled to an Internal Review of our investigations’ conclusions regarding whether harassment occurred. (Procedures, Section V.A.) Such review shall be completed within thirty days. You can also seek an Independent Review by an investigator selected by the school from a roster of investigators maintained by the Vermont Agency of Education in conjunction with the Vermont Human Rights Commission of our investigation’s conclusions regarding whether harassment occurred or when found to have occurred whether the school’s response was adequate to solve the problem. (Procedures, Section V.B.) If you wish to pursue one - or both - of these options please contact our Superintendent of Schools at [INSERT ADDRESS]. In the case of an independent review please submit your request in writing and no later than (insert date thirty days from the date of this letter). (NOTE: **It is recommended that schools amend the procedures to explicitly provide in cases of an internal review a time limit for the parent to review (30 days is appropriate), and that the request be in writing. If you have done so then you can omit the limiting phrase “In the case of an independent review”**).

You may also refer complaints regarding incidents of alleged harassment to the Vermont Human Rights Commission or the U.S. Department of Education Office of Civil Rights division for review. The contact information for both entities are listed in Procedures Section V.C. (Enclosed)

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

DRAFT LETTER ANNOUNCING VIOLATION OF HHB OR RETALIATION FOUND

TO: Accused Student/Parent(s)

On [insert date of first letter announcing investigation] you were provided written notification that the school had initiated an investigation under [INSERT SCHOOL OR SU NAME] Policy for the Prevention of Harassment, Hazing and Bullying and our related procedures.

I write today to report the investigation was completed on [INSERT DATE] [note this date should not be more than 5 school days prior; and unless a delay letter was sent – see page 11 above – cannot be more than 5 school days from the date of receipt of notice of information by the designee which prompted the investigation] with a finding of **substantiation of a violation of the school’s aforementioned policy**, with respect to (INSERT ONE: “harassment”/”hazing”/”bullying”/”retaliation”).

By law and Section IV of our Procedures on the Prevention of Harassment, Hazing and Bullying of Students we are required to take prompt and appropriate reasonable steps to prevent a reoccurrence of the offending conduct. We have taken and will take steps consistent with this obligation. Accordingly, your child (will serve/be required to engage in) [ANNOUNCE DISCIPLINE FOR HHB POLICY VIOLATIONS IF THEY ARE TO BE IMPOSED.] [IN CASES OF OUT OF SCHOOL SUSPENSION ALSO ANNOUNCE ANY RE-ENTRY MEETING TO BE HELD BY DATE AND TIME IF APPROPRIATE.]

Any student determined to be violation of the Policy for the Prevention of Harassment, Hazing & Bullying of Students may appeal that determination and/or any related disciplinary action(s) taken, directly to the board of the school district. (Procedures, Section V “Rights of Accused Students.”) Should you wish to pursue this right, please contact in writing within ten calendar days of receipt of this letter the school board directly of that request. The Board will then set the matter for review at the next scheduled school board meeting to the extent practicable, but no later than 30 days from receipt of your request. Please note while discipline recommendations *in excess of ten days of suspension shall be considered “staye’d”* until the conclusion of such review and other related board reviews, other lesser suspensions, discipline and/or other actions taken for the safety of students may still proceed to the extent practicable. Please see the attached Procedures for further details regarding this process.

[ADDITIONALLY WHERE THE SCHOOL ADMINISTRATOR RECOMMENDS DISCIPLINE FOR MORE THAN TEN DAYS SUSPENSION OR EXPULSION, IT IS RECOMMENDED THAT YOU CONTACT LEGAL COUNSEL IN DRAFTING OF THIS NOTICE AS STUDENT MAY ADDITIONALLY BE ENTITLED TO BRING LEGAL COUNSEL, QUESTION WITNESSES, ETC].

Thank you again for your cooperation as we continue to work towards creating a school environment that is supportive, respectful and safe for all students.

Signed,

Designee

Enclosures: Policy for the Prevention of Harassment, Hazing and Bullying of Students; Procedure for the Prevention of Harassment, Hazing and Bullying of Students

BCC: Investigator's Investigative File

13. **General Duty to Report to Department for Children and Families:** When a complaint of harassment, hazing or bullying is made pursuant to the District’s policies, which includes allegations of child abuse, any person responsible for reporting suspected child abuse under 33 V.S.A. §4911 et seq. must report the allegation to the Commissioner of DCF. 2015 Vermont AOE Procedures “Reporting to Other Agencies.”

ONGOING/ACTION ITEM: Designees must be aware at all times of:

- (1) The ongoing and separately independent duty to report behaviors to DCF that may also violate the school’s Harassment, Hazing and/or Bullying Policies.
- (2) That the involvement of and/or reports to DCF do not relieve Designees of their obligations to timely pursue and complete an investigation upon receipt of notice which may constitute harassment, hazing and/or bullying.

New standard: Any mandated reporter who reasonably suspects abuse or neglect of a child shall report in accordance with the provisions of Section 4914 of this title within 24 hours of the time information regarding the suspected abuse or neglect was first received or observed (33 V.S.A. §4913©).

- The prior standard “have reasonable cause to believe” is replaced.
- The individual who reasonably suspects abuse/neglect must make a report directly – it is no longer sufficient to “cause a report to be made.”
- Must be made within 24 hours information was first received or observed.
- **Calling law enforcement is insufficient to meet this duty.**

14. **General Duty to Report to Vermont Agency of Education:** When a complaint of harassment, hazing and/or bullying is made pursuant to the District’s policies, *which includes allegations regarding a licensed educator that might be grounds under Vermont law for licensing action*, in accordance with 16 V.S.A. §1698, the School Administrator/Principal shall report the alleged conduct to the Superintendent, and the Superintendent shall report the alleged conduct to the Secretary.

ONGOING/ACTION ITEM: Designees must be aware at all times of:

- (1) The ongoing and separately independent duty of Principals to report to the Superintendent (and for Designees to report to Principals) **ALL behaviors of licensed educators that** (while they may also violate the school’s Harassment, Hazing, and/or Bullying Policies either by conduct directed at a student, or through an alleged failure to act consistent with duties imposed by these policies to respond or investigate policy violations), **may be grounds under Vermont law for licensing action by the Agency of Education.**

15. **General Duty to Report Incidents to the Police Consistent with FERPA:** Information obtained and documented by the school administration regarding the *school's response* to notice of student conduct that may constitute harassment, hazing and/or bullying may constitute an “educational record” regarding the student or student(s) involved as defined by the Family Education Rights and Privacy Act. Accordingly, such information may not be disclosed without prior parent approval to local law enforcement except in response to a lawfully issued subpoena, or in connection with an emergency if disclosure is necessary to protect the health or safety of the student or other individuals. This prohibition on disclosure is to protect student privacy and is not intended to prevent school officials from cooperating in a law enforcement investigation where appropriate.

ONGOING/ACTION ITEM: Designees must be aware at all times of:

- (1) Their ongoing and separately independent duty to maintain Student rights to confidentiality where behaviors may also violate the school’s Harassment, Hazing and/or Bullying Policies, such that they can distinguish “educational records” privacy compliance vs. cooperating with a police investigation (eye witness reporting vs. turning over ‘educational records’ in violation of FERPA); and
- (2) That any involvement and/or reports made to the local police do not relieve Designees of their obligations under Vermont law to timely pursue and complete an investigation upon receipt of notice which may constitute harassment, hazing and/or bullying.
- (3) Content of the related Guidance Memo (Page 38).

GUIDANCE MEMO

RE: Police and HHB Investigations

Q: When can I (as either a school administrator or employee/teacher), tell the police about student conduct that may violate the law without parental consent?

A: Conduct witnessed firsthand that may be considered a criminal act may be reported by you to law enforcement. Such a report does not violate a Student's rights under the Family Education Rights and Privacy Act. FERPA applies to the disclosure of education records and of information derived from education records. FERPA does not prohibit a school official from disclosing information about a student that is obtained through the school official's personal knowledge or observation and not from the student's education records.

Q: I have participated, either directly as the investigator, or indirectly, as someone who was interviewed by the investigator or who provided information to the investigator, in the school's response to a complaint of a violation of the HHB policy. Can I tell the police about information I either provided, learned about or obtained during that process?

A: Unless you have personal knowledge or observation of a student's conduct, such information learned during the investigation may constitute an "educational record" regarding the student or student(s) involved as defined by the Family Education Rights and Privacy Act, 34 C.F.R. Part 99, and may not be disclosed without prior parent approval to law enforcement.

Q: What if the police subpoenas the information?

A: If you are served a lawfully issued subpoena you may disclose information without parental consent. However, if the subpoena requires production at a future date which would allow you to alert the parent that you have been served with the subpoena, you should inform them of the subpoena, of your intention to comply, and their right to seek legal remedies to prevent such compliance. (See Form Letter page 21).

Q: Is there any time that I can disclose information that may constitute an "educational record" without a subpoena or parental consent?

A: Disclosure MAY occur in connection with an emergency if the disclosure is necessary to protect the health or safety of the student or other individuals.

SAMPLE LETTER NOTIFYING PARENT OF RECEIPT OF SUBPOENA SEEKING STUDENT RECORDS

Dear Parent of Student Whose Records are Sought:

I am writing to inform you that a subpoena seeking educational records of your child was served upon the [SCHOOL NAME], with a compliance date of [DATE]. A copy of that subpoena has been enclosed with this letter.

I am writing to you to provide you with knowledge of the subpoena so that you may, if you wish, seek to prevent the production of your [CHILD'S] educational records directly from the court by filing a motion (request) to prevent disclosure of the educational records. If you intend to do so, please be aware that the school must comply with the subpoena by [SAME DATE]. Accordingly, please let me know if you will seek to prevent the disclosure.

Please be aware that for as long as the subpoena remains in force the school is obligated to comply with its terms. In the absence of any order from the court preventing disclosure the school will be obligated to produce your [CHILD's] records on [SAME DATE].

Feel free to contact me with any questions. Thank you for your attention to this matter.

Sincerely,

(Signed)

School Administrator

Enclosure: Copy of Subpoena

Cc: Investigative File