

**SAMPLE LETTER SEEKING CONSENT TO DISCLOSE**

**TO: Complainant Student/Parent(s)**

**RE: Seeking Consent to Disclose Personally Identifiable Information of Complainant Student To Accused Student/Appellant/Parent(s)**

As you know, on INSERT DATE we completed our investigation into a complaint of student conduct under the School's HHB Policy and determined that the policy was violated. An appeal of this finding and/or any related discipline that may have been recommended as a consequence has been initiated by the offending student. In connection with that appeal, the appellant has requested access to documents created, reviewed and considered in reaching those determinations by the school. Some of those documents make reference to your child. While we have redacted your child's name and personal information such redactions may be insufficient to wholly protect your child's identity in accordance with protections under the Family Education Rights and Privacy Act. 34 C.F.R. Part 99.

I am writing to seek your written, dated, consent to disclose these documents to the Appellant Student/Parent. You have the right to decline to provide this consent and no consequence to your child will result from your refusal to consent.

I am enclosing copies of the documents sought, with your child's name and information redacted. Please review and if you are willing to consent, sign and date a copy of this letter as indicated below and return to the School. If you do not consent these documents will NOT be released.

Please feel free to call me with any questions.

Signed

Administrator

Enclosures: Copies of Redacted Documents Sought by Appellant Student<sup>5</sup>

I, PARENT NAME, consent to disclosure of the attached documents for purposes of the above referenced Appeal process.

DATE: \_\_\_\_\_ Parent Name: \_\_\_\_\_

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<sup>5</sup> Documents enclosed in letter should be labelled for this mailing and for future production (if consented to). IE: they each should be labelled consecutively "HHB APPEAL (DATE)/01..."

## **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

## Harassment, Hazing and Bullying Toolkit

### Introduction

On May 29, 2015, Secretary Holcombe announced a new single Model Harassment, Hazing and Bullying Policy/Procedures (<http://education.vermont.gov/documents/edu-memo-holcombe-regarding-hhb-model-policies-2015.pdf>). VSBIT was proud to assist the AOE, and other educational stakeholders, in this endeavor. We agree with the Secretary that this “unified document should make it easier for school leaders and designated reporters to appropriately address allegations of harassment, hazing or bullying”.

It is important to note that although most of the information in the combined policy details responsibilities that exist today, the new policy contains substantive changes including appeal rights for students found to have engaged in harassment, hazing or bullying. Given these changes, and the overall complexity of this issue, VSBIT saw the need to provide superintendents, principals, school board members and designees resources on how best to meet their responsibilities. The result was the development of a toolkit designed to assist each group in understanding and addressing applicable state/federal statutes, the new HHB state policy, as well as state/federal legal and regulatory decisions in this area.

Our toolkit spells out each group’s specific duties, details time specific action items, provides specific tips on how to accomplish each duty, as well as provides sample guidance memos/letters. It is designed to give you the tools to manage the complex world of harassment, hazing and bullying complaints/investigations.

Users of this toolkit will note the inclusion of many “Summer Action Items”. The items are noted as such as it is the most logical time to address such issues. If you have not yet addressed one of these issues, and need assistance doing so, please contact Don Morrill, VSBIT Multi-Line Program Manager ([don@vsbit.org](mailto:don@vsbit.org)).

Those SU/SD’s that are Multi-Line members also have access to Legal Grants to assist in this area (<http://www.vsbit.org/multi-line-program-vsbit/grants/>).

# BUILDING ADMINISTRATOR/PRINCIPAL PRIMER

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## 1. Duty to Adopt/Update Legally Compliant School Policies and Procedures

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

**ACTION ITEM/SUMMER:** Principals should work with the school board and superintendents, annually, prior to the commencement of the school year, to ensure that school policies and procedures are up to date and current. Compliance is assumed where school adopts the most recent AOE Model Policies and Procedures and therefore is strongly recommended.

<http://education.vermont.gov/documents/edu-hhb-model-policy.pdf>

<http://education.vermont.gov/documents/edu-hhb-model-procedures.pdf>

Note: 16 V.S.A § 570 provides “Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the Secretary.”

## 2. Duty to Publish Policies and Procedures

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

**ACTION ITEM/SPRING/SUMMER:** Principals should make sure the student handbook and related school publications (including web-links) contain updated policies and procedures on harassment, hazing and bullying.

**ACTION ITEM/SPRING/SUMMER:** Principals should perform the work necessary to allow them to report to the school board, annually, prior to the commencement of the school year, that the current version of policies and procedures on harassment, hazing and bullying are included in the student handbook and related school publications.

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

### 3. Duty to Notify and Distribute to Students and Parents the Policies and Procedures

School Boards are charged annually, and prior to the commencement of curricular and cocurricular activities, with providing notice of the harassment, hazing and bullying policies and procedures to students/custodial parents or guardians of students, with reference to the consequences for violations. Notice must be in age appropriate language and include examples of harassment, hazing and bullying. 16 V.S.A. §570(c); 16 V.S.A. §1161a.

**ACTION ITEM/SPRING/SUMMER:** When updating the school's annual notice regarding FERPA/confidential student information (Updated model notice available at: [www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html](http://www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html) ), Principals or their designees should:

- (1) **NOTIFY**/Ensure that similar mailings occur prior to the commencement of the school year forwarding to all students/custodial parents/guardians either:
  - (a) copies of the policies and procedures with reference to possible disciplinary penalties for violations (See Guidance Memorandum Below); OR
  - (b) website addresses for accessing same, with written alternative instructions for obtaining hard copies in the event families do not have reliable internet access. In either case notice must be in age appropriate language and include examples of harassment, hazing and bullying
- (2) **UPDATE**/Update the school board, annually, prior to the commencement of the school year, confirming that copies of the school's policies and procedures with reference to possible disciplinary penalties for violations have been forwarded to school families before the commencement of curricular and cocurricular activities.

*Tip: Documentation of all notification and update efforts should be maintained (copies of mailings and updates made) in a FILE labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

## **GUIDANCE MEMORANDUM**

What MUST and what SHOULD be included in the school publication/notice regarding potential disciplinary penalties for policy violations?

- (1) The publication MUST be in age appropriate language.
- (2) The publication MUST include examples of harassment, hazing and bullying (in age appropriate language).
- (3) The publication MUST fulfill its primary obligation to provide parents/students “notice” by explaining/giving to parents/students a clear understanding of the potential penalties that may be imposed for violations of HHB policies.
- (4) The publication SHOULD at the same time retain the school’s discretion as to when/how to impose these penalties. For example, a general commitment to progressive discipline may be referenced, but the publication should make it clear that the option to impose strict discipline immediately for first offenders where the situation/circumstances warrant is retained.
- (5) The publication SHOULD either explicitly include, or incorporate by reference, Section IV.A. of the 2015 AOE Model Procedures with respect to each of the following mandatory considerations for a school in fashioning a response to substantiated policy violations
  - (a) Potential Remedial Actions (2015 AOE Model Procedures IV.A.i);
  - (b) School Access/Environment Considerations (2015 AOE Model Procedures IV.A.ii);
  - (c) Hazing Case Considerations (2015 AOE Model Procedures IV.A.iii);
  - (d) Other Remedies (2015 AOE Model Procedures IV.A.iv).
- (6) The publication SHOULD alert Parents that the details of the school’s particular response to a substantiated complaint of policy violations as it relates to other students is confidential, particularly as it relates to student discipline.
- (7) The publication SHOULD alert Parents that the Student violator retains appeal rights throughout this process which, if triggered, may delay the imposition of discipline.

#### 4. Duty to Distribute and Notify Faculty and Staff of Policies and Procedures

School Boards are charged annually, and prior to the commencement of curricular and cocurricular activities, with providing notice of harassment, hazing and bullying policies and procedures to faculty and staff. 16 V.S.A. §570(c).

**ACTION ITEM/EARLY SPRING to END OF SCHOOL YEAR:**

**TRAININGS/Principals/Administrators** should work to set up trainings for faculty and staff and designees on their obligations under the school's harassment, hazing and bullying policies so that those can occur prior to the commencement of school in the fall (ideally during in service).

Whether the training occurs in a live seminar or via video, be sure to maintain documentation of all trainings (include date, duration, topics covered, any materials handed out, attendees).

**ACTION ITEM/UPDATES:** Principals should annually update the school board (directly or via Superintendent), prior to the commencement of the school year, confirming distribution of updated policies and procedures to school faculty and staff before the commencement of curricular and cocurricular activities, and the arrangement for trainings of same.

*Tip: Be sure School Board meeting minutes document the updates provided on this topic.*

*Tip: Documentation of all Training and Update efforts should be maintained (copies of emails, mailings, meeting minutes) in a FOLDER labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

#### 5. Duty to Educate Students On Harassment, Hazing and Bullying Prevention and Related Policies and Procedure Content

School Boards are asked to use their discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect. 16 V.S.A. §570(c).

**ACTION ITEM:** January-June: Administrators/Principals (or their designees) schedule for the upcoming school year:

- (1) trainings/seminars on school climate, tolerance and diversity for core administrators, including HHB "Designees" (IE: Best Institute, Human Rights Commission Trainings, etc.);
- (2) presenters/assemblies/other awareness activities for students;
- (3) student instruction on the substance of the policies and procedures related to harassment, hazing and bullying.

**ACTION ITEM:** Principals/Administrators should annually confirm and outline to their school boards, prior to the commencement of the school year, their specific plan of student instruction on both the policies and the procedures and the expectations around harassment, hazing and bullying, and to create a school climate of tolerance and respect throughout the school year.

*Tip: Documentation of all Training/Education/Update efforts should be maintained (copies of mailings and updates made) in a FOLDER labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

#### **6. Duty to Designate 2 or More School Employees Per School Campus to Receive Complaints on Harassment/Hazing/Bullying**

School boards are required to designate annually two or more persons per school campus with the responsibility of receiving and investigating complaints on harassment/hazing/bullying. 16 V.S.A. §570a(a)(7); 570b(7); 570c(7).

**ACTION ITEM LATE SPRING/SUMMER:** Principals/Administrators should designate at least two or more employees with the task of receiving and investigating complaints on HHB. It is best practice to have designees of each gender to maximize their approachability among the entire student body. These designations should be timely made to ensure the following (before the commencement of school):

- (1) Inclusion in any publication/weblisting of school's policies and procedures on harassment/hazing/bullying;
- (2) Inclusion in any publication regarding the school's discipline policies, such as a school/student handbook or related publication;
- (3) Inclusion in the annual notice mailing/weblisting to be forwarded to students and guardians/parents regarding the school's harassment/hazing/bullying policies and procedures.
- (4) Annual training of the designees on performance of their duties under the harassment/hazing/bullying policies. These trainings should by best practice occur by the commencement of school.

*Tip: Documentation of these efforts should be maintained (copies of mailings and updates made) in a FOLDER labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

#### **7. Duty to Designate Equity Coordinator**

Principals/Administrators should designate annually an Equity Coordinator to oversee all aspects of the implementation of the harassment/hazing/bullying policies as they relate to any obligations also imposed by federal law regarding discrimination.

**ACTION ITEM: LATE SPRING/SUMMER:** Principals/Administrators should designate an employee with the task of overseeing implementation of the policies as they relate to any obligations imposed by federal law regarding discrimination.

The assignment can be made to one or both of the designees (See Part D above) as an additional duty, but in any case should be made in a manner timely enough, again, to allow for the following:

- (1) Inclusion in the school's policies and procedures on harassment/hazing/bullying and anti-discrimination;
- (2) Inclusion in any publication regarding the school's discipline policies, such as a school/student handbook or related publication;
- (3) Inclusion in the annual notice mailing to be forwarded to students and guardians/parents regarding the school's harassment/hazing/bullying policies and procedures.
- (4) Annual training on performance of their duties. These trainings should by best practice occur by the commencement of school.

*Tip: Documentation of all Training and Update efforts should be maintained (copies of mailings and updates made) in a FOLDER labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

#### **8. Duty to Initiate or Cause to Be Initiated Timely Investigations Under Harassment, Hazing and Bullying Procedures**

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 the designated employee, initiate or cause to be initiated, an investigation of the allegations, which the administrator reasonably believes may constitute harassment, hazing or bullying. 2015 AOE Model Procedures (III.A.)

**ACTION ITEM/ONGOING:** The AOE 2015 Model Procedures place the ultimate responsibility for compliance with the initiation of investigations within one school day after "Designee" receives notice of a potential HHB Policy violation on school administrators. To comply with this duty, Administrators/Principals should:

- (1) Arrange for Designees to be trained prior to the commencement of school each school year on the conduct of investigations and other designee duties
  - (a) This can be accomplished by arranging for in person seminar trainings OR
  - (b) Via use of an online/training video.

*Tip: Whether the training occurs in a live seminar or via video be sure to maintain documentation of all trainings (include date, duration, topics covered, any materials handed out, attendees).*

- (2) Periodically review the timing requirement throughout the school year with designees.

- (3) Best practice may include periodic audits of Designee written investigation reports (i.e. during school breaks such as Thanksgiving, December, February and April) to ensure compliance with this requirement.

*Tip: Documentation of all Trainings, Reviews, Internal Audits should be maintained (copies of emails, mailings, meeting minutes) in a FOLDER labelled "(School Year) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.*

## **9. Duty to Assign Investigators**

The school administrator shall assign a person to conduct the investigation; nothing herein shall be construed to preclude the school administrator from assigning him/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.)

**ACTION ITEM/LATE SUMMER:** The school administrator should, prior to the start of the school year:

- (1) Decide whether or not "Designees" will - in addition to their role as recipients of complaints of student harassment, hazing and/or bullying – conduct investigations in response to those complaints (except where they are the subject of a complaint), and communicate those assignments accordingly, and be sure to document those efforts.
- (2) Arrange for back up investigators (including the school administrator) for those cases where the Designees are unavailable due to illness, vacation, or workload.

*Tip: Be sure to maintain copies of documentation (ie: email correspondence or memoranda of assignment) in your "(SCHOOL YEAR) HHB Compliance Efforts" to demonstrate this occurred. This should be maintained throughout the year and submitted at years' end to Central Office.*

## **10. Duty to Take Appropriate Interim Measures Pending Investigations**

It may be appropriate for the school to take interim measures during the investigation of a complaint. 2015 AOE Model Procedures (III.C.)

**ACTION ITEM/LATE SUMMER:** School administrators/principals should:

- (1) Prior to the start of the school year establish between themselves and all "Designees" in their building clearly understood communication protocols which will prompt timely discussion following the receipt of any complaints of HHB policy violations of the need and appropriateness for interim measures pending the results of the investigations.
- (2) Review prior to the start of the school year, and periodically throughout the year, with Designees, the Guidance Memorandum of considerations regarding interim measures (Page 11).

**TIP: Documentation of all communications and protocols engaged in connection with the above should be maintained (copies of emails, mailings, meeting minutes) in a FOLDER labelled "(SCHOOL YEAR) HHB Compliance Efforts." This should be maintained throughout the year and submitted at years' end to Central Office.**

## GUIDANCE MEMORANDUM

RE: Duty to Take Appropriate Interim Measures Pending Investigations

Q: What are “Interim Measures?”

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?

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.<sup>1</sup>

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

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.<sup>2</sup>

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

The school MAY decide (but it remains within the school’s discretion) to separate the students immediately in class and during transportation.<sup>3</sup> 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?

Yes.<sup>4</sup>

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

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 (unlikely unless the school was a party to the court action), such compliance is arguably voluntary with respect to the school, and the obligation for compliance with its terms rests with the subject of the order (the offending student). In any such case the school should insist on reviewing the order before implementing any action in response to it.

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<sup>1</sup> 2015 AOE Model Procedures (III.C.)

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

## **11. Duty to Take Appropriate Action on Substantiated Complaints**

In cases where harassment, hazing and/or bullying is substantiated, the District shall take prompt and appropriate remedial action reasonably calculated to stop the harassment, hazing and/or bullying; prevent its recurrence; and to remedy the impact of the offending conduct on the victim(s), where appropriate. Such action may include a wide range of responses from education to serious discipline. Serious discipline may include expulsion or removal from school property. It may also involve penalties or sanctions for both organizations and individuals who engage in hazing. 2015 AOE Model Policies (IV.A.)

**ACTION ITEM/ONGOING:** Following a determination that an act(s) of harassment, hazing and/or bullying has been committed, the school administrator should coordinate with the investigator to impose prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the harassment, hazing and/or bullying and to prevent any recurrence, and to remedy its effects on victims. In so doing, the following should be considered:

- (1) Any discipline imposed should be consistent with the school's prior notice to parents of the potential consequences for violations of the HHB policy; (See Duty #3 and Guidance Memorandum PAGE 14).
- (2) Potential Remedial Actions;
- (3) School Access/Environmental Considerations;
- (4) Hazing Case Considerations;
- (5) Other Remedies
- (6) The offending Student's right to appeal any such finding or discipline to the Board;
- (7) That although imposition of any discipline may need to be stayed where the offending Student exercises his/her right to a Board appeal, the stay should not delay non-disciplinary remedial actions designed solely to alleviate negative impacts upon the complainant student.

## **12. Duty to Make Available Alternative Dispute Resolution (ADR)**

At all stages of the investigation and determination process, school officials are encouraged to make available to Complainants alternative dispute resolution methods, such as mediation, for resolving complaints. 2015 AOE Model Procedures (IV.C.)

**ACTION ITEM/ONGOING:** School Administrators should coordinate with designees about communicating to complainant student/parent(s) the option of ADR. In so doing, the following should be considered:

- (1) The nature of the accusations (for example, face to face mediation is not appropriate for sexual violence cases);
- (2) The age of the complainant and the accused individual;
- (3) The agreement of the complainant; and

- (4) Other relevant factors such as any disability of the target or accused individual, safety issues, the relationship between target and accused individual, or any history of repeated misconduct/harassment by the accused individual.
- (5) In any case where ADR is being considered please review Guidance Memorandum (Page 14) before proceeding.

## GUIDANCE MEMORANDUM

RE: Alternative Dispute Resolution Considerations

Q: What is ADR?

ADR or Alternative Dispute Resolution refers to a variety of methods for the resolution of conflict which engage dialogue, an exchange of views and ultimately, a mutually agreed upon resolution. Mediation is an example.

Q: Should ADR be considered in all cases?

In the school harassment/hazing/bullying context, ADR MUST ONLY be used after a consideration of a variety of factors which include: (1) the nature/seriousness of the accusations; (2) the age of the participants; (3) whether the complainant agrees; (4) other factors such as participant disabilities, safety, history between the parties, etc. 2015 AOE Model Policies (IV.C.)

Q: What if the case involved sexual assault or sexual misconduct?

It is not recommended that ADR be used for such cases.

Q: What if the complainant agrees to ADR as an alternative to discipline but the school still believes discipline is required for the offending student?

School administrators must take care not to transfer the burden of discipline decisions from their shoulders to that of a Complaining Student. It should be the goal that ADR be employed in order to help facilitate better relationships and understanding between the parties to a Policy complaint. However, if a Student has clearly violated the HHB policy it should remain the School Administrator's responsibility for enforcing that policy with whatever remedial and disciplinary actions are deemed necessary. School Administrators should clearly communicate to both parties in ALL CASES that the decision for disciplinary actions remains at all times with the school and will NOT be affected and/or dependent upon a Complainant's willingness to mediate.

Q: If the Complainant wants to pursue ADR immediately after raising a HHB policy complaint can the school then avoid completion of its investigation?

NO. The employment of ADR methods does not replace the mandated obligation of the School Administrator, upon a Designee's receipt of "Notice" of a HHB complaint, to investigate (or have their designee investigate) the complaint, including the requirement that such investigation begin within one school business day, and completed within five business days of receipt of "Notice."

### **13. Duty to Provide Documentation to Accused Student/Appellant in Board Level Appeals**

The school district shall make available upon request of the Accused Student/Appellant any relevant information, documents, materials, etc. related to the investigation and related finding(s) on appeal that can be redacted and de-identified in compliance with the requirements of the Family Education Rights and Privacy Act (FERPA). 2015 AOE Model Procedures (VI.B.)

**ACTION ITEM/ONGOING:** Where an Accused Student appeals any HHB finding against him/her to the School Board, School Administrators shall coordinate with their respective Superintendents and Boards in responding to any Accused Student/Appellant requests for documentary information. In so doing the following is recommended:

- (1) Any documents reviewed and relevant to the decision challenged by the Accused/Appellant Student and which relates SOLELY to the Accused/Appellant Student without reference to personally identifiable information of any other student, SHALL be produced to the Appellant Student upon request within a reasonable period of time, reasonableness is determined with consideration of the date set for the appeal hearing, and no later than 45 days after the request.
- (2) Any documents reviewed and relevant to the decision challenged by the Accused/Appellant Student which contain personally identifiable information of any other student than the Appellant Student, shall only be produced if:
  - (a) The document can be redacted to remove the other student's personally identifiable information sufficient to maintain protections for that student under the Family Education Rights and Privacy Act; and
  - (b) If it cannot be redacted sufficient to maintain FERPA Protections, may only be produced upon receipt of written dated consent of the parent/guardian of the eligible student (the student for whom the personally identifiable information is being redacted) by the school. The School Administrator in such cases MAY (but is not required to) seek such consent. In the absence of such written, dated consent, the documents may NOT be produced.

(SEE FORM LETTER SEEKING PARENT CONSENT TO DISCLOSURE Page 16)

**SAMPLE LETTER SEEKING CONSENT TO DISCLOSE**

**TO: Complainant Student/Parent(s)**

**RE: Seeking Consent to Disclose Personally Identifiable Information of Complainant Student To Accused Student/Appellant/Parent(s)**

As you know, on INSERT DATE we completed our investigation into a complaint of student conduct under the School's HHB Policy and determined that the policy was violated. An appeal of this finding and/or any related discipline that may have been recommended as a consequence has been initiated by the offending student. In connection with that appeal, the appellant has requested access to documents created, reviewed and considered in reaching those determinations by the school. Some of those documents make reference to your child. While we have redacted your child's name and personal information such redactions may be insufficient to wholly protect your child's identity in accordance with protections under the Family Education Rights and Privacy Act. 34 C.F.R. Part 99.

I am writing to seek your written, dated, consent to disclose these documents to the Appellant Student/Parent. You have the right to decline to provide this consent and no consequence to your child will result from your refusal to consent.

I am enclosing copies of the documents sought, with your child's name and information redacted. Please review and if you are willing to consent, sign and date a copy of this letter as indicated below and return to the School. If you do not consent these documents will NOT be released.

Please feel free to call me with any questions.

Signed

Administrator

Enclosures: Copies of Redacted Documents Sought by Appellant Student<sup>5</sup>

I, PARENT NAME, consent to disclosure of the attached documents for purposes of the above referenced Appeal process.

DATE: \_\_\_\_\_ Parent Name: \_\_\_\_\_

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<sup>5</sup> Documents enclosed in letter should be labelled for this mailing and for future production (if consented to). IE: they each should be labelled consecutively "HHB APPEAL (DATE)/01..."

#### **14. 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").

**SUMMER ACTION ITEM:** Administrators annually should confirm with their Superintendents plans to:

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

*Tip: Be sure to maintain copies of documentation via email reminders and memoranda in your "(SCHOOL) YEAR HHB Compliance Efforts" to demonstrate this occurred. This should be maintained throughout the year and submitted at years' end to Central Office.*

#### **15. Duty to Report to Vermont Agency of Education**

When a complaint of harassment, hazing 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, the Building Administrator/Principal shall report the alleged conduct to the Superintendent, and the Superintendent shall report the alleged conduct to the Secretary.

**ONGOING ACTION ITEM:** Principals must work with their Designees to:

- (1) Confirm 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.
- (2) Principals should review this requirement with their Designees prior to the start of the school year, and periodically through the school year (for example following school breaks and vacations).

*Tip: Be sure to maintain copies of documentation via email reminders and memoranda in your "(SCHOOL YEAR) HHB Compliance Efforts" to demonstrate this occurred. This should be maintained throughout the year and submitted at years' end to Central Office.*

## **16. 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, educational records 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.

**ACTION ITEM:** School administrators and Principals annually should:

- (1) Confirm training for teachers and administrators on the ongoing and separately independent duty to maintain Student rights to confidentiality where behaviors may also violate the school's Harassment, Hazing and/or Bullying Policies, such that they can distinguish "educational records" privacy compliance vs. cooperating with a police investigation (eye witness reporting vs. turning over "educational records" in violation of FERPA).
- (2) Confirm and review with teachers and staff that any involvement and/or reports made to the local police do not relieve staff, teachers and administrators 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) See Guidance Memorandum

*Tip: Be sure to maintain copies of documentation via email reminders and memoranda in your "(SCHOOL YEAR) HHB Compliance Efforts" to demonstrate this occurred. This should be maintained throughout the year and submitted at years' end to Central Office.*

## GUIDANCE MEMORANDUM

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?

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?

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?

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 20).

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

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