

MEMORANDUM

TO: Superintendents, Principals and Heads of School
FROM: Rebecca Holcombe, Secretary of Education
SUBJECT: Model Harassment, Hazing and Bullying (“HHB”) Prevention Policies
DATE: May 29, 2015

As you know, all Vermont public and independent schools are required to have Harassment, Hazing and Bullying prevention policies in effect which are “... at least as stringent as model policies developed by the Secretary.” 16 V.S.A. § 570. In recent months, we have worked to streamline these mandated policies into a single policy document that incorporates related procedures. We believe this unified document should make it easier for school leaders and designated reporters to appropriately address allegations of harassment, hazing or bullying.

This project is admittedly overdue. We know that dealing with HHB incident reporting at the school level is an immense challenge. Educators are not trained to be investigators, fact finders and adjudicators of fact-intensive events that regularly present many complex challenges. The reality is that getting the facts and weighing the evidence in these cases can be a real challenge even for seasoned investigators with the commensurate training and experience. Factual accounts can vary among witnesses. Sometimes witnesses are cooperative; sometimes they are not. Reports of an HHB incident may be made verbally or in writing, by a student, a parent, or someone else with knowledge of the incident. The timing of the report is sometimes near in time to the alleged act, while other times there is a delay, which can impact the memories and perceptions of parties and witnesses to an event.

The Legislature has given the education field a tough but very necessary job in investigating and adjudicating complaints or reports of an HHB incident. We all know the corrosive effects that these cases can have on the climate and culture in our schools. Incidents can be very damaging to the target, and can erode the sense of safety and comfort of the school community as a whole.

Our first priority needs to be working proactively to create strong and healthy school cultures that prevent incidents of harassment, hazing, and bullying from happening at all. Ideally, our collective efforts around school climate and culture will make real inroads at reducing the volume of these reported incidents. However, it is likely we will always have to deal with responding to HHB incidents on some level.

The enclosed “integrated” HHB [policy](#) and related [procedures](#) (which are expressly incorporated into the policy itself) reflect our best effort to acknowledge the realities of operating a school on a day-to-day basis. You have a lot on your plates, and need to respond in real time to ensure the safety and well-being of the people in your care. You need a state level policy that is sensible, practical and effective, so that you can respond quickly and appropriately to a report of an alleged HHB incident, without compromising the quality of how you handle that response. You need clear procedures, so that you can meet the important policy objective of investigating what could be a very serious complaint of harassment, hazing, or bullying of a student without compromising your ability to provide necessary classroom instruction and basic student services.

The most substantial change in this new policy is that it combines the three policies for HHB into one policy document, with a consistent set of procedures for investigating incidents. You will note some important process changes. I will not cover them all in this memorandum, but here are some that stand out as substantive amendments to the prior state policy, along with some important reminders:

Basis For Requesting an Independent Review

- An independent review is only available in cases where there has been an allegation of harassment and the complainant (the person making the complaint) is either dissatisfied with the final determination as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school’s response was inadequate to correct the problem.

Who Can Request an Independent Review?

- An independent review can only be requested by a person who has complained that he/she is a victim of harassment, and one of the above criteria is satisfied (i.e.: dissatisfaction that no harassment finding was made or dissatisfaction with remedial action taken to correct the problem, after a finding by the school that harassment did occur.)

Are there any Appeal Rights for a Student, when the Student has been found to have engaged in an act of Harassment, Hazing, or Bullying?

- **Yes. This is a new and updated provision in the State’s model policy.**
- The procedures that accompany the model policy now include a section titled

“Rights of Accused Students.” Any person determined to have engaged in an act(s) of harassment, hazing, and/or bullying may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district. Appeals must be made to the school board within ten (10) calendar days of a student receiving the determination that an act(s) of harassment, hazing, and/or bullying has occurred and/or any announced discipline.

- It is important to note that the appeal hearing before the school board is not a “fact finding” exercise where the school board hears from witnesses or takes any new evidence. Rather, this is an appeal hearing “on the record” that simply reviews the record from the investigation and adjudication at the school level. The role of the school board will be to hear any relevant arguments that the school district or parent/eligible student makes, and decide whether the school “abused its discretion” in finding that an act of harassment, hazing, or bullying occurred. Under the “abuse of discretion” standard, school level findings are to be given great weight and school boards are not to “retry” the case. We encourage school administrators to consult their own counsel as may be necessary in understanding this new provision in the State’s model policy/related procedures. You can also contact Gregory Glennon, AOE General Counsel, at 802-479-1756 with any questions or concerns about this.

Is there a Time Limit on when a Complainant Can Request an Independent Review?

- **Yes. This is a new and updated provision in the State’s model policy.**

The procedures that accompany the model HHB policy now include a provision that states a complainant may request an independent review **within thirty (30) calendar days of a final determination** if s/he: (1) is dissatisfied with the final determination as to whether harassment occurred, or (2) believes that although a final determination was made that harassment occurred, the school’s response was inadequate to correct the problem.

The rationale for imposing a filing deadline for requesting an independent review is to ensure that there is closure to these cases, after a reasonable period of time has passed for requesting an independent review.

CONCLUSION

Various individuals and groups with interests in preventing harassment, hazing and bullying in Vermont schools, or in implementing harassment policies in schools, have reviewed the enclosed model HHB policy. We have responded to the concerns of several of the reviewers, and the input we have received from the Council on

Harassment, Hazing and Bullying, the Human Rights Commission, the VSBA, VSBIT, and other members of the education community has informed our work in this area.

Lastly, as this area of the law, and education policy continues to evolve, it may be necessary to amend portions of this model policy, and we will continue to listen to and respond to the concerns of all those who are subject to this policy and who must implement HHB policies in schools.

If you have any follow up questions, please contact the Agency of Education Legal Division, Gregory J. Glennon, General Counsel at 802-479-1756.

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