

Policy on Prevention of Harassment of Students

I. Purposes

The _____ District/Independent School (“District/Independent School”) is committed to providing all of its students with a safe and supportive school environment in which all members of the school community are treated with respect. This policy addresses incident(s) and/or conduct that occur on school property, on a school bus or at a school-sponsored activity, or incident(s) and/or conduct that does not occur on school property, on a school bus or at a school-sponsored activity but where direct harm to the welfare of the school can be demonstrated or the conduct can be shown to pose a clear and substantial interference with another student’s equal access to educational programs.

Harassment is a form of unlawful discrimination that will not be tolerated. It is the policy of the District/Independent School to prohibit the unlawful harassment of students based on race, creed, color, national origin, marital status, disability, sex, sexual orientation, and gender identity, to the extent required by law. In addition, retaliation is a form of unlawful discrimination that will not be tolerated. Consistent with these purposes, annually,¹ each school shall select two or more designated employees to receive complaints and shall publicize their availability in any publication of the District/Independent School that sets forth the comprehensive rules, procedures, and standards of conduct for the school.²

It is the intent of the District/Independent School to apply and enforce this policy in a manner that is consistent with student rights to free expression under the First Amendment of the U.S. Constitution. The purpose of this harassment policy is to prohibit conduct or communication that is directed at a person's protected characteristics as defined below and that is likely to substantially disrupt the educational learning process and/or access to educational resources, or create a hostile learning environment.

The District/Independent School shall promptly and effectively address all complaints of harassment in accordance with the procedures established by this policy. In cases where harassment is substantiated, the school shall take prompt and appropriate remedial action reasonably calculated to stop the harassment. Such action may include a wide range of responses from education to serious discipline. Such serious discipline may include termination for employees and, for students, expulsion or removal from school property. Nothing herein shall be construed to prohibit punishment of a person for conduct which, although it does not rise to the level of harassment as defined herein, otherwise violates one or more of the school's other disciplinary policies or codes of conduct.

II. Definitions

A. **"Harassment"** means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's

¹ See 16 V.S.A. §565(c)(1).

² See Appendix A.

or a student's family member's actual or perceived race, creed, color, national origin, marital status, disability, sex, sexual orientation, or gender identity³ that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

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

(1) Sexual harassment,⁴ which means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual or physical conduct of a sexual nature when one or both of the following occur:

- (i) submission to that conduct is made either explicitly or implicitly a term or condition of a student's education, academic status or progress; or
- (ii) submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student

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

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

- B. **“Complaint”** means an oral or written report by a student or any person to an employee alleging that a student has been subjected to conduct that may rise to the level of harassment.
- C. **“Complainant”** means a student who has filed an oral or written complaint with a school employee or a student who is the target of alleged harassment in a report made by another person.

³ Effective July 1, 2007, 1 V.S.A. §144 defines “gender identity” as “an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless of the individual’s assigned sex at birth.”

⁴ This statutory definition of sexual harassment describes only the “quid pro quo” form of sexual harassment that can occur between an adult and student. However, sexual harassment may also include student to student conduct as well as conduct that creates a hostile environment.

- D. **“Designated employee”** means an employee who has been designated by the school to receive complaints of harassment pursuant to subdivision 16 V.S.A. §565(c)(1).
- E. **“Employee”** includes any person employed directly by or retained through a contract with the District/Independent School, an agent of the school, a school board member/member of the board of trustees, a student teacher, an intern or a school volunteer. For purposes of this policy, “agent of the school” includes supervisory union staff.
- F. **“Notice”** means a written complaint or oral information that harassment may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the harassment, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred.⁵
- G. **“Retaliation”** is any adverse action by any person against a person who has filed a complaint of harassment or against a person who assists or participates in an investigation, proceeding or hearing related to the harassment complaint. Such adverse action may include conduct by a school employee directed at a student in the form of intimidation or reprisal such as diminishment of grades, suspension, expulsion, change in educational conditions, loss of privileges or benefits, or other unwarranted disciplinary action. Retaliation may also include conduct by a student directed at another student in the form of further harassment, intimidation, and reprisal.
- H. **“School administrator”** means a superintendent, principal/head of school/technical center director or his/her designee.

III. Reporting Student Harassment

- A. **Student reporting:** Any student who believes that s/he has been harassed under this policy, or who witnesses or has knowledge of conduct that s/he reasonably believes might constitute harassment, should promptly report the conduct to a designated employee or any other school employee.
- B. **School employee reporting:** Any school employee who witnesses conduct that s/he reasonably believes might constitute harassment shall take reasonable action to stop the conduct and to prevent its recurrence and immediately report it to a designated employee. Any school employee who overhears or directly receives information about conduct that might constitute harassment shall immediately report the information to a designated employee. If one of the designated employees is the person alleged to be engaged in the conduct complained of, the complaint shall be immediately filed with the other designated employee or the school administrator.
- C. **Other reporting:** Any other person who witnesses conduct that s/he reasonably believes might constitute student harassment under this policy should promptly report the conduct to a designated employee.

⁵ See 16 V.S.A. §14(c)(3).

- D. Documentation of the report: If the complaint is oral, the designated employee shall promptly reduce the complaint to writing in a harassment complaint form, including the time, place, and nature of the alleged conduct, and the identity of the complainant, alleged perpetrator, and any witnesses.
- E. False Complaint: Any person who knowingly makes a false accusation regarding harassment may be subject to disciplinary action up to and including suspension and expulsion with regard to students, or up to and including discharge with regard to employees. There shall be no adverse action taken against a person for reporting a complaint of harassment when the person has a good faith belief that harassment occurred or is occurring.

IV. Procedures Following a Report

- A. Notification:⁶ Upon receipt of a complaint of harassment the designated employee shall immediately inform the school administrator of the complaint. In addition, the designated employee shall immediately provide a copy of this harassment policy to the complainant and accused individual. If either the complainant or the accused individual is under the age of 18, his or her parent(s) or guardian(s) shall be: (1) promptly notified that a complaint of harassment has been filed and provided with a copy of this policy; (2) notified if an alternative dispute resolution method will be offered and, if it occurs, of the outcome of any such attempt; and (3) notified in writing of the results of the complaint investigation. All notification letters shall be subject to state and/or federal laws protecting the confidentiality of personally identifiable student information. A school administrator may seek waiver of confidentiality rights of the accused in order to inform the complainant of any disciplinary action taken in cases where the school determined that harassment or other misconduct occurred.
- B. Investigation:⁷ 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 the filing of a complaint with a designated employee, initiate or cause to be initiated, an investigation of the allegations. 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.

No later than five school days from the filing of the complaint with the designated employee, unless special circumstances are present and documented, the investigator shall submit a written initial determination to the school administrator. The report shall include a statement of the findings of the investigator as to whether the allegations have been substantiated, and as to whether the alleged conduct constitutes harassment. When the initial determination concludes that an accused student has engaged in harassment, the school administrator shall use his or her discretion to decide the appropriate disciplinary and/or remedial action. In cases where the investigation has identified other conduct that may constitute a violation of

⁶ See 16 V.S.A. §14(a).

⁷ See 16 V.S.A. §565(b)(1)(E).

other school disciplinary policies or codes of conduct, the designated employee shall report such conduct to the school administrator for action in accordance with relevant school policies.

All levels of internal review⁸ of the investigator's initial determination, and the issuance of a final decision, shall, unless special circumstances are present and documented by the District/Independent School, be completed within 30 calendar days after the review is requested.

- C. Action on a substantiated complaint: If, after investigation, the school finds that the alleged conduct occurred and that it constitutes harassment, the school shall take prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the harassment and prevent any recurrence of harassment. Such action may include warning, reprimand, education, training and counseling, transfer, suspension, and/or expulsion of a student, and warning, reprimand, education, training and counseling, transfer, suspension and/or termination of an employee.
- D. Alternative dispute resolution:⁹ 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. The following should be considered before pursuing alternative dispute resolution methods: (1) the nature of the accusations, (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 the target and accused individual, or any history of repeated misconduct/harassment by the accused individual. If an alternative dispute resolution is either not appropriate or is unsuccessful, the school administrator shall initiate or cause to be initiated an investigation of the allegations in accordance with the timelines established in this policy.
- E. Appeal: A person determined to be in violation of this policy and subjected to disciplinary action under it may appeal the determination and/or the disciplinary action(s) taken in the same manner as other disciplinary actions, in accordance with the District's/Independent School's discipline policy, applicable statutes, or collective bargaining agreements.
- F. Independent Review:¹⁰ A complainant may request an independent review if s/he: (1) believes that the school did not correctly analyze the complaint and failed to conduct an investigation of the incident because the school believed the alleged conduct did not constitute possible harassment, (2) is dissatisfied with the final determination following an investigation as to whether harassment occurred, or (3) believes that although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem. The complainant shall make such a request in writing to the superintendent of schools/head of school. Upon such request, the superintendent/head of

⁸ An "internal review" is any procedure provided by the school through policy or practice and is not the same as an "independent review" as described below.

⁹ See 16 V.S.A. §565(b)(1)(C).

¹⁰ See 16 V.S.A. §565(f).

school shall promptly initiate an independent review by a neutral person as described under 16 V.S.A. § 565(f), and shall cooperate with the independent reviewer so that s/he may proceed expeditiously. The review shall consist of an interview of the complainant and relevant school officials and a review of the written materials from the school's investigation. Upon completion of the independent review, the reviewer shall advise the complainant and school officials in writing: (1) as to the sufficiency of the school's investigation, its determination, and/or the steps taken by the school to correct any harassment found to have occurred, and (2) of recommendations of any steps the school might take to prevent further harassment from occurring. A copy of the independent review report shall be sent to the Commissioner. The reviewer shall advise the student of other remedies¹¹ that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution. The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records. The costs of the independent review shall be borne by the District/Independent School. The District/Independent School may request an independent review at any stage of the process.

- F. **Retaliation:** It is unlawful for any person to retaliate against a person who has filed a complaint of harassment or against a person who assists or participates in an investigation, proceeding or hearing related to the harassment complaint. A person may violate this anti-retaliation provision regardless of whether the underlying complaint of harassment is substantiated.

V. Confidentiality and Record Keeping

- A. The privacy of the complainant, the accused individual, and the witnesses shall be maintained consistent with the District's/Independent School's obligations to investigate, to take appropriate action, and to comply with laws governing the disclosure of student records or other applicable discovery or disclosure obligations.
- B. The Superintendent or school administrator shall assure that a record of any complaint, its investigation and disposition, as well as any disciplinary or remedial action taken following the completion of the investigation, is maintained by the District/Independent School in a confidential file accessible only to authorized persons. All investigation records, including but not limited to, the complaint form, interview notes, additional evidence, and the investigative report, shall be kept for at least six years after the investigation is completed.

VI. Reporting to Other Agencies

When a complaint made pursuant to this policy 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. If the victim is over the age of 18 and a report of abuse is warranted, the report shall be made to Adult Protective Services in accordance with 33 V.S.A. §6901 et seq.

¹¹ Such as those identified in Section VIII of this policy.

If a harassment complaint is made in a public school about conduct by a licensed educator that might be grounds under the State Board of Education Rules for licensing action, the principal shall report the alleged conduct to the Superintendent and the Superintendent shall report the alleged conduct to the Commissioner. If a harassment complaint is made in an independent school about conduct by a licensed educator that might be grounds under the State Board of Education rules for licensing action, the head of school is encouraged to report the alleged conduct to the Commissioner.

Nothing in this policy shall preclude anyone from reporting any incidents and/or conduct that may be considered a criminal act to law enforcement officials.

VII. Dissemination of Information, Training, and Data Reporting

- A. Dissemination of Information.¹² Annually, prior to the commencement of curricular and co-curricular activities, the District/Independent School shall provide notice of this policy and procedures to students, custodial parents or guardians of students, and employees. Notice to students shall be in age-appropriate language and include examples of harassment. At a minimum, this notice shall appear in any publication of the District/Independent School that sets forth the comprehensive rules, procedures and standards of conduct for the District/Independent School.
- B. Training.¹³ The school administrator shall use her/his discretion in developing age-appropriate methods of discussing the meaning and substance of this policy with students to help prevent harassment. The school administrator shall implement training for school staff within the context of professional development to enable staff to recognize, prevent and respond to harassment.
- C. Data Gathering. Public school districts shall provide the Vermont Department of Education with data requested by the Commissioner.

VIII. Alternative Complaint Process

In addition to, or as an alternative to filing a harassment complaint pursuant to this policy, a person may file a harassment complaint with the Vermont Human Rights Commission or the Office for Civil Rights of the U.S. Department of Education at the addresses noted below:

Vermont Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
(800) 416-2010 or (802) 828-2480 (voice)
(877) 294-9200 (tty)
(802) 828-2481 (fax)
Email: human.rights@state.vt.us

¹² See 16 V.S.A. §565(d).

¹³ See 16 V.S.A. §565(d).

Office for Civil Rights, Boston Office
U.S. Department of Education
8th Floor
5 Post Office Square
Boston, MA 02109-3921
617-289-0111 (voice)
877-521-2172 (tdd)
617-289-0150 (fax)
Email: OCR.Boston@ed.gov

Legal References:

Title V, Section B, 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.;
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d;
Title IX of the Educational Amendments Act of 1972, 20 U.S.C. §§1681 et seq.;
Family Education Rights Privacy Act; 20 U.S.C. 1232g;
Public Accommodations, 9 V.S.A. §§4500 et seq. ;
Education, Classifications and Definitions, 16 V.S.A. §11a (26);
Education, Harassment, Notice and Response, 16 V.S.A. §14;
Education, 16 V.S.A. §140(a)(1);
Education, 16 V.S.A. §166(e);
Education, Harassment and Hazing Prevention Policy, 16 V.S.A. §565;
Education, Discipline, 16 V.S.A. §1161a;
Education, Suspension or Expulsion of Pupils, 16 V.S.A. §1162;
Child Abuse, 33 V.S.A. §§4911 et seq.;
Adult Protective Services, 33 V.S.A. §6901 et seq., all as they may be amended from time to time.

Washington v. Pierce, 179 VT 318 (2005)

APPENDIX A

Designated Employees

The following employees of the _____ School have been designated by the District/Independent School to receive harassment complaints pursuant to this policy and 16 V.S.A. §565(c)(1):

Name: _____

Title: _____

Contact information: _____

Name: _____

Title: _____

Contact information: _____