

AN INTERPRETATION OF VERMONT'S MODEL PROCEDURES ON THE PREVENTION OF HARASSMENT, HAZING AND BULLYING OF STUDENTS

Vermont's Model Procedures on the Prevention of Harassment, Hazing and Bullying set forth the legal obligations for Vermont schools on how to respond to inappropriate student conduct which may constitute a violation of those policies. To better understand the purpose and practice of these Policies and Procedures it is important to keep the following in mind:

The Policy sets forth the precise elements of student conduct which is prohibited by Vermont law under the definitions of "harassment," "hazing," "bullying" and "retaliation." Those definitions govern the school's response. Those definitions are legally distinct and separate from the common use and understanding of any of those terms by the general public. Understanding the differences between common usage and the policy definitions will help avoid misunderstandings.

Hazing

For example, while someone may perceive or understand "**hazing**" to mean demeaning conduct between students on a school associated athletic team, the definition applied in Vermont schools requires something more, it requires proof of "intentional, knowing or reckless conduct which is intended to or may reasonably be expected to endanger another student's emotional or physical well being" and be in connection with a school affiliated group organization. In this way Vermont's definition of hazing requires proof of "endangering" behaviors, not merely embarrassing behaviors.

Harassment

The definition of **harassment** is designed to capture and protect against student behaviors which if allowed to exist unchecked would result in unfair, unequal and discriminatory access to educational opportunities in a place of Public Accommodation such as a Vermont school. **Therefore, Vermont's definition of harassment requires more than proof of, say, bigoted, racially charged, sexist, or other similarly discriminatorily motivated behaviors.** Rather, this is only one element (albeit an essential element) of analyzing whether or not a harassment policy violation occurred. So while a student's conduct will be analyzed to see if it was "based on" or motivated by" a protected characteristic, such as race, in addition to that the behavior must be shown to have either a purpose or effect of substantially and objectively impacting the targeted/victim student's educational experience, by either impacting their (a) access to school; OR (b) performance in school OR (c) creating a hostile environment in school. Federal law defines a hostile environment as follows:

1. Harassment based on a protected characteristic like gender, race, religion, disability or sexual preference;

2. Alleged harassment was unwelcome; and
3. Harassment was severe or pervasive.

Bullying

Vermont's definition of "**bullying**" is a more general form of protection that is in some ways more direct and yet somewhat unique in that it requires – with respect to behaviors that happen in school or during school activities – only proof of an improper intent by the accused student, and proof of repetitive conduct. For example, a student who engages in conduct which is **intended to humiliate, or intimidate or threaten** (there need be only proof of one of the three) another student, and does so more than once (repeated), has bullied that other student under Vermont's definition, **even if the targeted student is not in fact humiliated, intimidated or threatened**. The intention to humiliate, intimidate or threaten is enough to trigger "bullying" if the conduct is committed within school, during school activities, or on a school bus. (That said, if the target is truly unaffected by the behavior the level of response by the school to the offender's conduct may be adjusted accordingly.)

If the student behavior happens elsewhere (not during school, etc.), then it will not be found to violate the school bullying policy unless there are educational impacts on the targeted student. Such off campus conduct will only be bullying if it also "poses a clear and substantial interference with their right to access educational programming" as a consequence.

Summary

The common theme in each of these definitions therefore is to highlight for school's the need to identify/single out for review, possibly investigate and ultimately to engage in remedial and disciplinary response to **those behaviors which impair free and equal access to educational opportunities, and/or create an unsafe learning environment**. It should be understood that while enforcement of these rules may lead to better peer cohesion, understanding, tolerance, etc. these are secondary outcomes and not the purpose of the laws as passed. Put another way, these are not civility or mandatory friendship rules. They set a basic standard of expectation by the District for all student conduct with a goal of fulfilling the legal obligation for schools to provide non-discriminatory, equal and safe access to educational opportunities provided by the District to all of its students.

The Procedures Identify How and When a School Will Investigate Student's Suspected of Violating the Policy

Whether or not a school ‘investigates’ behaviors under the policies requires school administrators to determine whether they reasonably believe allegations against a student (or teacher for cases of harassment) “might” constitute a violation of the Policy definitions. If they “reasonably” believe they do, the Procedures mandate that they initiate an investigation. This is a decision to be made by the school administrator, based on the information available to them at the time. It is not determined by a parent or student requesting an investigation, or receipt of a written complaint. Likewise, simply because a student or parent asks for an investigation, does not compel an administrator to initiate one. The deciding factor is the information conveyed to and known by the administrator at the time and whether that information would support a “reasonable belief” that the allegations may constitute “hazing” “harassment” or “bullying” as defined by the policy. The trigger is information/data/knowledge as assessed by the administrator under the ‘reasonableness’ standard.

Investigations

Investigations are simply the vehicle by which, once triggered based on the administrator’s knowledge of allegations (as explained above), the school assesses both the conduct which has occurred and the impact of the conduct both in order to: (1) determine whether a policy violation has occurred; (2) and if so, to identify tools and strategies to respond to those behaviors both with respect to the student who engaged in the behavior and to support and remediate any educational impacts experienced by the targeted student.

While the procedures will inform those remedial/disciplinary responses, it is for the school to employ its educational expertise along with its knowledge of the students involved, and the information obtained in the course of the investigation, to determine the most appropriate remedies for both the offending and targeted student.