

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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TRAVIS ALLEN,

and

JESSICA ALLEN, as next friend and
mother of minor **BLAKE ALLEN,**

Plaintiffs,

v.

LAYNE MILLINGTON, in his official
and personal capacities as
Superintendent of Orange Southwest
School District,

LISA FLOYD, in her official and
personal capacities as Co-Principal of
Randolph Union High School,

CATY SUTTON, in her official and
personal capacities as Co-Principal of
Randolph Union High School, and

**ORANGE SOUTHWEST SCHOOL
DISTRICT BOARD,**

Defendants.

Civil Action No.: 2:22-cv-197

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

Plaintiffs Travis and Blake Allen, by and through undersigned counsel, for their Verified Complaint against Defendants, hereby state and allege as follows:

INTRODUCTION

1. Travis Allen and his fourteen-year-old daughter, Blake, were punished for expressing their views on a matter of profound public concern: whether a teenage male who identifies as female should be permitted to change in a girls' locker room regardless of the discomfort experienced by girls in that room. In objecting to a male being in the room while the girls are changing, Travis and Blake each made comments underscoring that the trans-identifying student is in fact a male, including by using male pronouns. Indeed, their view of the student's maleness was foundational to their opinions on appropriate use of the locker room. Yet, their remarks were too much for Defendants' transgender orthodoxy—Travis was deemed to have “misgendered” the student, while Blake was found guilty of “harassment” and “bullying”—so Defendants disciplined both of them.

2. But Defendants are state actors and violate the First Amendment when they attempt to dictate what may be said on matters of public concern. And they cannot discriminate against speech on the basis of its viewpoint. Yet, that is exactly what happened here. Defendants punished Travis and Blake for saying that a male is a male, as a matter of sex and biology, regardless of the gender identity that the male has assumed.

3. The locker room controversy presented itself in the Orange Southwest School District (“OSSD”) on September 21, 2022, when a 14-year-old biological male on the Randolph Union High School (“RUHS”) girls' volleyball team—here called “T.S.”—entered the girls' locker room while the girls were changing. Having never been warned of the possibility of this encounter by RUHS, multiple girls in the locker room, including Blake, became upset; and multiple parents, including Blake's mother, Jessica, called the RUHS co-principals' office to object.

4. Blake expressed her views on the subject the next day, when a few students discussed it with her in French class—a class T.S. does not attend.

Explaining that T.S. “literally is a dude,” she opined “he does not belong in the girls’ locker room.” As a result of these comments, Defendants took disciplinary action against Blake, finding that her reference to T.S. as a male constituted “harassment on the basis of gender identity.”

5. But punishing Blake for expressing a dissident view was not enough; Defendants also seek to coerce her to agree with their transgender dogma. In addition to giving Blake two days’ out-of-school suspension, Defendants are requiring her to “[t]ake part in a restorative circle with . . . our Equity Coordinator and at least two students who can help her understand the rights of students to access public accommodations . . . in a manner consistent with their gender identity,” and “submit a reflective essay.” Defendants intend to render their own judgment on this reflective essay; and if they deem it “lacking good faith,” Blake will be required to serve an additional three days’ out-of-school suspension. Meanwhile, Defendants took no action at all against T.S.—who said, during math class the week after entering the girls’ locker room, “I’m going to f***ing kill Blake Allen.”

6. Travis expressed his views on the locker-room issue outside of school soon after hearing about the threat that T.S. had made against his daughter. In a Facebook post that evening, a user identifying herself as the “mother of the trans student in question” claimed “[Blake] made up the story for attention” and that “truth will prevail.” Travis responded, “the truth is your son watched my daughter and multiple other girls change in the locker room. While he got a free show, they got violated.” Defendant Millington, OSSD’s Superintendent, found that this post “misgendered a transgender student” and suspended Travis from his job as middle school girls’ soccer coach without pay for the rest of the season.

7. The First Amendment does not countenance this kind of government censorship, where a public school mandates that students and coaches refrain from expressing any view that offends its prescribed views, particularly on an issue as

important as whether the school should permit males identifying as girls to undress, shower and change in the girls' locker room. Travis and Blake Allen were entitled to express their views on that issue and, in expressing those views, to support them with what is a biological fact—that a biological teenage male is, indeed, a male. This case presents a textbook example of unconstitutional viewpoint discrimination, and Plaintiffs are entitled to all appropriate relief.

JURISDICTION & VENUE

8. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

9. This Court has subject-matter jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

10. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343, the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02, the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65, and costs and attorneys' fees under 42 U.S.C. § 1988.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district and all of the events or omissions giving rise to the claims alleged in the Complaint occurred in this district.

THE PARTIES

12. Plaintiff Travis Allen resides in Orange County, Vermont. He and his wife, Jessica, have four children. Three of their children, including Blake, are in the Orange Southwest School District ("OSSD").

13. Plaintiff Blake Allen, bringing this action by and through her next friend and mother, Jessica Allen, resides with her family in Orange County, Vermont. She is in the ninth grade at Randolph Union High School (“RUHS”).

14. Defendant Layne Millington is and was at all relevant times the Superintendent of OSSD. He resides in Orange County, Vermont.

15. As superintendent, Defendant Millington is the “chief executive officer” of OSSD. Vt. Stat. Ann. tit. 16, § 11(a)(13).

16. As superintendent, Defendant Millington has ultimate authority over coaches employed by OSSD, including the power to suspend or terminate coaches, as exercised against Plaintiff Travis Allen.

17. Defendant Lisa Floyd is and was at all relevant times the Co-Principal of RUHS in OSSD. She resides in Windsor County, Vermont.

18. Defendant Caty Sutton is and was at all relevant times the Co-Principal of RUHS in OSSD. She resides in Washington County, Vermont.

19. Defendants Millington, Floyd, and Sutton, as the superintendent and principals, have the authority to “suspend a student for up to 10 school days,” Vt. Stat. Ann. tit. 16, § 1162(a), and exercised that authority against Blake Allen.

20. Defendant Orange Southwest School District Board (“OSSD Board”) is and was at all relevant times the body governing schools within OSSD, and its headquarters are located in Orange County, Vermont.

21. Defendant OSSD Board has authority to enact policies governing administration of schools within OSSD, which include the policies challenged here, and directing action of the OSSD Superintendent and OSSD school administrators, including the actions taken against Plaintiffs.

22. RUHS consists of both a high school and middle school.

23. At all times relevant to this Complaint, and for each act or omission alleged herein, Defendants were acting under color of a statute, regulation, or custom of the State of Vermont (i.e., under color of state law and authority).

FACTUAL ALLEGATIONS

A. The Allen Family Actively Supports the Orange Southwest School District and Randolph Union High School.

24. Travis and Jessica Allen purchased a home in Randolph Center, Vermont in August 2017, and their four children, including Blake, began attending public schools in the Orange Southwest School District (“OSSD”). They currently have three children enrolled in Randolph Union High School (“RUHS”).

25. Over the past 5 years, Travis has been heavily involved in OSSD and RUHS sports and other activities. At various times, he coached the RUHS middle school boys’ basketball team, the RUHS varsity boys’ baseball team, and the RUHS junior varsity girls’ basketball team. He has served as the timekeeper for RUHS girls’ volleyball. And he currently serves as senior-project panelist for four unrelated seniors in the RUHS senior program. He also currently serves as a referee for high-school and middle-school basketball games employed by the International Association for the Appointment of Basketball Officials (Vermont chapter).

26. Also, for the past two years—until he was suspended on October 18, 2022, Travis served as the RUHS middle school girls’ soccer coach. His duties in that regard included preparing the players for competitive play, ensuring they were fit to participate, and managing the team’s participation in both practices and competition.

27. Travis signed a contract to coach for the Fall 2021 season and was paid roughly \$1,200 for his coaching that season.

28. Travis’s contract was renewed for the Fall 2022 season, and he was promised roughly \$1,900 for the season.

29. If Travis had not been suspended, his contract to coach middle school girls' soccer would have been automatically renewed for the Fall 2023 season.

30. During the two years that Travis coached RUHS middle school girls' soccer, Travis increased participation on team. After he was terminated, the players expressed their appreciation for Travis's coaching efforts by sending him a video showing their individual remarks of thanks and praise.

31. Jessica also has been heavily involved with OSSD and RUHS sports and other activities. She was active in the RUHS sports boosters, serving as its president from Fall 2020 through Spring 2021. She is on the board of Friends of Shizukuishi, a student-exchange program in which RUHS middle school students travel to Shizukuishi, Japan. And, like Travis, she advises unrelated seniors with their senior projects in the RUHS senior program—something she has done for the past three years.

32. Like her parents, Blake is active in school sports. She plays RUHS volleyball and softball and participated in middle school gymnastics.

B. A Locker-Room Controversy Erupts.

33. There is one girls' locker room at RUHS. It does not provide separate or private changing areas. It contains two long wooden benches and numerous lockers in one common changing area that is separated from a toilet/shower area (with a single bathroom stall) by an open partition. Photographs of the RUHS girls' locker room are attached hereto as Exhibit 1.

34. During the 2021-22 school year, Defendants Floyd and Sutton received multiple complaints that two males at RUHS who identified as female were using the girls' locker room and restrooms in a manner that made certain girls feel uncomfortable.

35. T.S.—a teenage male who identifies as a female and is now in the ninth grade at RUHS—was one of the subjects of those prior complaints.

36. In the 2022-23 school year, T.S. joined the RUHS girls' volleyball team.

37. Before September 21, 2022, RUHS provided no notice to members of the girls' volleyball team or their parents that it would be school policy to permit T.S. or a trans-identifying male to use the girls' locker room, including while girls in the locker room were in a state of undress or showering, and that T.S. or a trans-identifying male would be permitted to undress and shower at the same time as the girls.

38. Before September 21, 2022, T.S. had not entered the girls' locker room while members of the girls' volleyball team were using it.

39. On September 21, 2022, the girls' volleyball team played an away game at St. Johnsbury Academy in St. Johnsbury, Vermont. Prior to leaving for the game, many members of the team went to the RUHS girls' locker room to change into their sportswear and uniforms.

40. While numerous girls on the volleyball team were using the girls' locker room, T.S. entered the locker room. When T.S. entered, girls in the locker room were in various states of undress, with some shirtless or without pants.

41. Immediately upon seeing T.S., Blake and other girls told or asked T.S. to leave the locker room but T.S. proceeded into the room and walked to the separately partitioned toilet/shower area.

42. T.S.'s presence in the girls' locker room while the girls were in the middle of changing and some were in a state of undress was upsetting to a number of girls on the volleyball team, including Blake.

43. Shortly after, T.S. looked out into the main area, asked the girls "are we still changing?" and remained in a position to observe them while they continued to change.

44. Blake gestured for T.S. to move back behind the partition.

45. When T.S. did not move back behind the partition and continued to watch the girls changing, Blake left the girls' locker room upset and called her mother Jessica.

46. Blake's mother called the school office to complain about T.S.'s presence in the girls' locker room while the girls were changing.

47. Other parents also contacted the school office to complain about T.S.'s presence in the girls' locker room while the girls were changing.

48. RUHS made no attempt to ensure the girls felt safe or provide them with any kind of support or counseling.

49. Defendants Floyd and Sutton told the girls' volleyball team and their families that "under state law" T.S. could use the girls' locker room even while girls were undressing or showering, and that if any girls felt uncomfortable, they should use one of the single-stall restrooms outside of the locker room.

50. Vermont law does not require RUHS to allow T.S. to use the girls' locker room while girls are using it. Rather, use of locker rooms by trans-identifying students, according to the Vermont Agency of Education, "requires school to consider numerous factors," including "protecting student privacy." A copy of the Agency's "Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students" is attached hereto as Exhibit 2.

51. There are only two single-stall restrooms outside the locker room; they do not have shower or locker facilities; and they were out of commission at the time of the events at issue due to vandalism.

52. Two days after the game against St. Johnsbury Academy, Blake and some other girls on the volleyball team needed to change for a home game against Montpelier. Because of Floyd's and Sutton's decision to permit T.S. to use the girls' locker room, the girls decided not to use the girls' locker room. Instead, they asked a

male friend to check the nearby boys' locker room to see if it was being used. When they were advised there was no one in the boys' locker room, they proceed to change in that empty locker room.

53. The next day, Defendant Floyd told Blake that she and the other girls on the volleyball team were not permitted to use the boys' locker room unless they identified as male, adding "I don't see Blake Allen identifying as a male anytime soon."

C. Blake Expresses Her Views on the Locker-Room Issue, and RUHS Begins an Investigation.

54. On Thursday, September 22, the day after Blake left the girls' locker room upset that T.S. was there, Blake discussed T.S.'s use of that locker room with three classmates sitting adjacent to her in French class—a class that T.S. is not in. The discussion was brief—lasting roughly 1 or 2 minutes—and ended when the teacher told the four students to get back to work.

55. In the discussion, Blake and her classmates exchanged various points of view on the locker room issue. In expressing her views, Blake explained that T.S. "literally is a dude" and opined "he does not belong in the girls' locker room." One student disagreed, opining "no one should care" whether T.S. uses the girls' locker room.

56. A student in the class who was not part of the conversation but overheard it reported Blake's comments to the co-principals' office.

57. The next day, Friday, September 23, Defendants Floyd and Sutton called Jessica Allen while she was at work to tell her they had received information that Blake may have inappropriately "misgendered" a student in certain comments made at school. They told Jessica RUHS was opening a harassment, hazing and bullying ("HHB") investigation pursuant to the HHB Policy.

58. The HHB Policy was enacted by the OSSD Board as Board Policy C10: Prevention of Harassment, Hazing and Bullying (Policy) and C10-P: Prevention of Harassment, Hazing and Bullying (Procedures). A complete copy of OSSD Board Policies C10 and C10-P (collectively, “HHB Policy”) is attached hereto as Exhibit 3.

59. During the HHB investigation, Defendant Floyd told Blake, “I think we all know this is referring to the situation in French class.”

60. The school’s HHB investigation of Blake focused on what she said in French class, with the investigators interviewing all three students who had talked with Blake about the locker room issue in French class as well as Blake’s French teacher.

61. On information and belief, the French teacher told the HHB investigators that she didn’t really recall the remarks made by Blake or the other students during their conversation and simply told them to get back to work.

D. The Girls’ Volleyball Team is Banned from the Locker Room, and the Locker-Room Controversy Becomes News.

62. Doubling down on their reaction to Blake’s speech, on Tuesday, September 27, Defendants Floyd and Sutton banned the girls’ volleyball team from using the girls’ locker room. A copy of the notice of this ban sent to the volleyball families is attached hereto as Exhibit 4.

63. The irony of the school’s decision to ban the girls’ volleyball team from the girls’ locker room in response to concern that males should not be using the girls’ locker room sparked media attention.

64. On Wednesday, September 28, a news team from WCAX-TV in Burlington, Vermont, showed up at RUHS and asked students to speak with them about the issue.

65. Blake spoke with the WCAX-TV news team about the issue. In the resulting story, “*Randolph High School investigating gender locker room dispute*,” published on September 28, Blake was quoted as saying, “I feel like for stating my opinion—that I don’t want a biological male changing with me—that I should not have harassment or bullying charges. They should all be dropped.” She was also quoted as saying: “They want all the girls who feel uncomfortable—so pretty much 10 girls—to get changed in a single stall bathroom, which would take over 30 minutes. Where if one person got changed separately, it would take a minute, like no extra time.” A copy of the WCAX-TV news story (no longer available on the WCAX-TV website¹) is attached hereto as Exhibit 5.

66. WCAX-TV also reported that Blake said T.S. made an “inappropriate comment” while members of the girls’ volleyball team were getting changed. Although Blake made a comment in that regard, she was referring to an incident involving two other RUHS girls that occurred with T.S. the year before.

67. The prior incident occurred in the 2021-22 school year, when T.S. was in the girls’ locker room with two girls and said, “my male instincts are kicking in.” This comment upset both girls so much that they each reported the incident to the co-principals’ office after it occurred.

68. Upon information and belief, the co-principals dismissed the girls’ complaints and took no action against T.S.

¹ WCAX-TV took the story down, with its news director explaining it did so “to prevent others from using our reporting to attack people in the transgender community.” A. Novak, *WCAX Deletes Story About Transgender Student in Randolph* (Oct. 11, 2022) <https://www.sevendaysvt.com/vermont/wcax-deletes-story-about-transgender-student-in-randolph/Content?oid=36681380>

E. T.S. Threatens to Kill Blake.

69. On September 29, after the WCAX-TV news story was published, T.S. told other students in math class, “I am going to f***ing kill Blake Allen.” One of the students who heard T.S. make this threat told Blake about it.

70. On September 29, Blake and the student who had heard T.S. make the threat reported T.S.’s threat to Defendants Floyd and Sutton.

71. Although RUHS has a threat assessment protocol, Defendants Floyd and Sutton waited until the day after the threat was made to conduct any threat assessment—notwithstanding the fact, which they knew, that Blake and T.S. ride the same bus to and from school.

72. Upon assessing the threat, Defendants Floyd and Sutton deemed the threat to be low-risk and dismissed Blake’s and the other student’s complaint.

73. On September 29, Jessica Allen asked Defendants Floyd and Sutton for a copy of the school’s threat assessment protocol, but Defendant Millington refused to provide it, claiming it was confidential. A copy of Millington’s email to Ms. Allen is attached hereto as Exhibit 6.

74. No action was taken against T.S. for threatening to kill Blake.

75. T.S. made an additional threat against Blake and other members of the girls’ volleyball team during a volleyball team bake sale on October 6, saying “I’m gonna f***ing kill somebody. They’re all d***heads.” That threat was reported to the RUHS athletic director, but no action was taken.

F. OSSD and RUHS Suspend Travis for Expressing His Views.

76. WCAX-TV published the RUHS locker room story on its Facebook page, and the story garnered significant public attention.

77. On Thursday, September 29, a Facebook user identifying as “the mother of the trans student in question” claimed “my daughter did not make any comments

at all.” T.S.’s mother further claimed Blake “made up the story for attention,” and said “[t]his is slander, defamation of character, and we have secured a lawyer.” The complete post is attached hereto as Exhibit 7.

78. Two hours later, in response to T.S.’s mother’s post, Travis posted that he was the “the father of the girl you claim ‘made up a story for attention.’” He wrote “the truth is your son watched my daughter and multiple other girls change in the locker room. While he got a free show, they got violated.” Travis’s complete post is attached hereto as Exhibit 8.

79. When he made his September 29 Facebook post, Travis was home and not performing any coaching duties.

80. On October 5, Defendants Floyd and Sutton met with Travis to ask him about his September 29 Facebook post. Travis acknowledged he wrote the post. Floyd and Sutton told Travis that the RUHS Ethics Agreement for Coaches (“Ethics Agreement”) does not allow him to “misgender” any child and that his September 29 Facebook post did just that, by referring to T.S. as “he.”

81. On October 4, the day before he met with Defendants Floyd and Sutton, Travis was asked by the RUHS Athletic Director to sign the Ethics Agreement. In that agreement, Travis agreed to uphold a set of ten core coaching beliefs designed to underscore a coach’s role “as a model in the education of the student athlete.” A copy of the Ethics Agreement is attached hereto as Exhibit 9.

82. Defendants had Travis sign the Ethics Agreement after he made the Facebook comments, and then applied it retroactively to punish him under it.

83. On October 11, Defendant Millington held an Open Forum for the OSSD community to address the locker-room controversy. Travis spoke at the Open Forum, publicly telling Blake he was proud of her and adding, “You should not have to change in front of male students, just the same they should not be changing in front of you.

I applaud you for challenging authority that this is wrong and needs not to happen.” The members of the OSSD Board were in attendance at this Open Forum.

84. On October 12, Travis spoke at the OSSD Board meeting, commenting his daughter “has not felt safe” at RUHS because “she had someone in the locker room watching her that was the opposite sex” and reported it, but “nothing happened,” and “this kid has made death threats, multiple times, [but] they’ve been deemed low.” He suggested that the Board use some of last year’s budget surplus to install separate changing stalls in the locker room.

85. On October 18, Defendant Millington met with Travis, told him that his September 29 post undermined public trust, and asked Travis what he could do to earn back public trust.

86. Travis responded that he would be willing to take down the Facebook post and refrain from using gendered pronouns when referring to students who identify as transgender.

87. Defendant Millington told Travis those measures would not be sufficient and that he would have to issue a public apology to continue coaching at RUHS.

88. Travis told Millington he could not issue a public apology for his September 29 post. While he considered apologizing so that he could continue coaching his youngest daughter’s soccer team, he concluded it was more important to stand up for what he believes: that there are differences between girls and males identifying as girls, and those differences matter when it comes to determining the appropriate use of locker rooms.

89. He did not apologize, so Millington suspended Travis from his job as RUHS middle school girls’ soccer coach without pay for the rest of the season.

90. Upon information and belief, the OSSD Board knew about and approved Millington’s suspension of Travis and also that Travis would be required to issue a public apology to retain or be reinstated to his coaching position.

91. In a follow-up confirmation of Travis's suspension, Millington stated that Travis was suspended immediately without pay for the rest of the season because his September 29 post had "misgendered a transgender student in our district." A copy of Millington's written confirmation of Travis's suspension is attached hereto as Exhibit 10.

92. Although Millington's suspension letter to Travis mentioned "public postings and comments you made," the only public posting or comment Travis made about T.S. was his single September 29 Facebook post.

93. Defendant Millington advised Travis that his suspension would end immediately if he publicly apologized for making his September 29 post.

94. Travis does not have any players who identify as transgender on the girls' soccer team that he coaches.

95. Travis has never directly interacted with T.S.

96. T.S. does not play on the middle school girls' soccer team.

97. Because T.S. is in high school, T.S. cannot play on the middle school girls' soccer team.

98. Travis's Facebook post did not interfere with his duties as a middle school soccer coach or his other duties at RUHS.

99. Travis does not have any policymaking or discretionary role within RUHS or OSSD.

100. While working at RUHS, Travis has had respectful interactions and relationships with all of his colleagues.

101. While working at RUHS, Travis has had only respectful interactions with the students he coaches and supervises and their parents.

102. While working at RUHS, Travis never faced any allegations of misconduct or discipline as a result of his coaching.

103. Defendant Millington did not base his suspension of Travis on any actions he took in his capacity as RUHS middle school girls' soccer coach or any interactions he had with any student athlete whom he coached.

104. As a result of his suspension, Travis was prohibited from coaching the soccer team for the remainder of the 2022 season.

105. As a result of his suspension, Travis's contract as girls' soccer coach for 2023 will not be renewed.

106. Upon information and belief, as a result of his suspension, Travis will not be able to coach any other sports at RUHS, which he otherwise would have done, including middle school girls' basketball in the upcoming Spring 2023 season.

G. OSSD and RUHS Punish Blake for Expressing Her Views.

107. RUHS completed its HHB investigation of Blake by October 14.

108. The HHB Policy requires Defendants to offer Blake "the opportunity to present witnesses and other evidence during an investigation." Exhibit 3, at § III.E.

109. Defendants never provided Blake with an opportunity to present evidence or otherwise defend herself during the course of the investigation.

110. For unknown reasons, Defendants Floyd and Sutton waited until October 21 to notify Blake, Travis and Jessica of the results of the investigation.

111. Defendants Floyd and Sutton knew that Blake and T.S. would be playing together in multiple girls' volleyball games between October 14 and October 21 but did not notify Blake of the discipline they decided to impose until October 21. T.S. continued to attend school and play in volleyball games with Blake throughout Defendants' investigation.

112. In their October 21 notification, Defendants Floyd and Sutton informed Blake and her family that Blake was found to have violated the HHB Policy by "engag[ing] in verbal and physical conduct directed at a student on the basis of the

targeted student's gender identity." A complete copy of this October 21 notification is attached hereto as Exhibit 11.

113. The October 21 notification further advised Blake and her family that because of her violation of the HHB Policy, Blake would be required to serve a two-day out-of-school suspension.

114. In addition to the two-day out-of-school suspension, the October 21 notification advised Blake and her family that Blake would be required to "[t]ake part in a restorative circle with . . . our Equity Coordinator and at least two students who can help her understand the rights of students to access public accommodations . . . in a manner consistent with their gender identity" and "submit a reflective essay."

115. Defendants intend to render their own judgment on this reflective essay; and if they deem it "lacking good faith," Blake will be required to serve an additional three days' out-of-school suspension.

116. No physical contact ever occurred between Blake and T.S.

117. The school disciplined Blake exclusively because of the viewpoints she expressed during the French class discussion.

118. Defendants' punishment of Travis and Blake have deterred others in the OSSD community from expressing their views regarding males who identify as female using the girls' locker room and regarding gender identity in general. Blake knows many other students at RUHS and a number of other players on the volleyball team who do not agree that males should be able to use the girls' locker room, but who are too afraid to voice their views given Defendants' punishment of her and Travis. Similarly, Travis knows a number of members in the OSSD community who share his views on gender identity and locker room usage but will not express those views because they fear they will be accused of "misgendering" and adversely affected.

119. The school did not take any disciplinary action against the other student participating in the French class discussion who expressed a different viewpoint.

**FIRST CAUSE OF ACTION
RETALIATION FOR PLAINTIFFS' EXERCISE OF THEIR RIGHT TO
FREE SPEECH (42 U.S.C. § 1983)**

120. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 119 of this Complaint.

121. Travis Allen and Blake Allen have rights under the First and Fourteenth Amendments of the U.S. Constitution to express their views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls' locker room, and in so doing to refer to the male as a male and using male pronouns.

122. By expressing such views, Travis Allen and Blake Allen were engaged in constitutionally protected activity.

123. Defendants took adverse action against Travis Allen by suspending him without pay from his position as coach of the middle school girls' soccer team.

124. Defendants took adverse action against Blake Allen by imposing disciplinary sanctions on her.

125. Defendants' adverse actions against Travis Allen and Blake Allen were motivated and substantially caused by the exercise of their right to engage in constitutionally protected activity, including the right to express views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls' locker room, and in so doing to refer to the male as male and using male pronouns.

126. Defendants would not have taken adverse action against Travis Allen and Blake Allen absent their expression of these constitutionally protected views.

127. By taking adverse action against Travis Allen and Blake Allen for expressing their views, Defendants unlawfully retaliated against them for exercising their constitutional rights of free speech.

128. Defendants' adverse actions against Travis Allen were sufficient to deter a person of ordinary firmness from exercising his constitutional rights and thus effectively chilled the exercise of Travis Allen's constitutional rights.

129. Defendants' adverse actions against Blake Allen were sufficient to deter a person of ordinary firmness from exercising her constitutional rights and thus effectively chilled the exercise of Blake Allen's constitutional rights.

130. Travis Allen spoke as a private citizen on a matter of public concern.

131. Travis Allen's and Blake Allen's expression of their views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls' locker room, reference to the male as a male, and use of male pronouns have not prevented Defendants from efficiently providing services to the public (or even threatened to).

132. Travis Allen's and Blake Allen's interest in expressing their views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls' locker room, referring to the male as a male, and using male pronouns outweighs any interest of Defendants in suppressing those views.

133. Defendants' actions caused injury to Travis Allen and Blake Allen, including depriving them of constitutional rights, loss of income, loss of reputation, and pain, suffering, and emotional distress.

**SECOND CAUSE OF ACTION
UNCONSTITUTIONAL CONTENT/VIEWPOINT DISCRIMINATION AND
COMPELLED SPEECH (42 U.S.C. § 1983)**

134. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 119 of this Complaint.

135. Plaintiffs' views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls' locker room, speech referring to the male as a male, and use of male pronouns are protected by the First and

Fourteenth Amendments of the U.S. Constitution.

136. Defendants suspended Travis Allen without pay from his coaching position for expressing those protected views.

137. Defendants imposed disciplinary sanctions on Blake Allen for expressing those protected views.

138. Defendants did not take any disciplinary action against coaches or students who took views opposite of Plaintiffs, including those who support the ability of a teenage male who identifies as a female to use the girls' locker room and those who refer to a teenage girl as a girl or female or use different pronouns.

139. The adverse actions taken against Plaintiffs for expressing these protected views did not advance a compelling state interest.

140. The adverse actions taken against Plaintiffs for expressing these protected views were not narrowly tailored to advance a compelling state interest.

141. The adverse actions taken against Plaintiffs for expressing these protected views cannot survive strict scrutiny.

142. By taking adverse action against Travis Allen and Blake Allen for expressing their protected views, including their reference to a male as a male and use of male pronouns, Defendants have engaged in content and/or viewpoint discrimination in violation of the First and Fourteenth Amendments.

143. The HHB Policy that Defendants used to punish Blake Allen for her protected speech is unconstitutional on its face and as applied under the First Amendment's Free Speech Clause.

144. By requiring Travis Allen to issue a public apology for his September 29 Facebook post as a condition to be reinstated as a coach, Defendants are seeking to compel him to speak in violation of the First and Fourteenth Amendments.

145. By requiring Blake Allen to take part in a "restorative circle" to help her "understand the rights of students to access public accommodations . . . in a manner

consistent with their gender identity” and “submit a reflective essay” that meets Defendants’ own standards in order to avoid additional out-of-school suspension, Defendants are seeking to compel her to speak in violation of the First and Fourteenth Amendments.

146. Defendants’ actions caused injury to Plaintiffs, including depriving them of their constitutional rights, loss of income, loss of future income, loss of reputation, and pain, suffering, and emotional distress.

**THIRD CAUSE OF ACTION
VIOLATION OF BLAKE ALLEN’S
RIGHT TO DUE PROCESS (42 U.S.C. § 1983)**

147. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 119 of this Complaint.

148. By disciplining her under vague policies, Defendants violated Blake Allen’s right to due process of law under the Fourteenth Amendment of the U.S. Constitution.

149. Blake Allen’s views on the appropriateness of a teenage male undressing, showering, and changing with teenage girls in a girls’ locker room, speech referring to the male as a male, and use of male pronouns are protected by the First and Fourteenth Amendments of the U.S. Constitution.

150. By accusing her harassment and bullying for allegedly violating the HHB Policy, Defendants punished Blake Allen for engaging in expression that the First Amendment protects.

151. Defendants’ HHB Policy and related practices are unconstitutionally vague because they grant school officials unbridled discretion in deciding what constitutes “gender identity,” “harassment,” “harassment on the basis of gender identity,” and “bullying,” because they utilize terms that are inherently subjective and elude any precise or objective definition that would be consistent from one administrator, teacher, or student to another, because they are incapable of providing

meaningful guidance to Defendants and other school officials, and because they force teachers and students to guess whether expression that the U.S. Constitution protects is in fact allowed.

152. Defendants' HHB Policy and related practices are unconstitutionally vague because they prohibit both "sexual harassment" and "harassment on the basis of gender identity" which, as defined by Defendants, are inherently in conflict.

153. For example, by subjecting Blake Allen to the presence of a teenage male watching her while she is undressing in a private locker room, Defendants are subjecting her to "unwelcome conduct of a sexual nature," which constitutes "sexual harassment."

154. Defendants' HHB Policy and related practices fail to provide a person of ordinary intelligence fair notice of what is prohibited and is so standardless that it authorizes discriminatory enforcement.

155. The lack of objective criteria, factors, or standards in Defendants' HHB Policy and related practices renders these policies and practices unconstitutionally vague and in violation of Blake Allen's right to due process of law under the U.S. Constitution.

156. Defendants' HHB Policy both facially and as applied violates the Due Process Clause of the Fourteenth Amendment.

157. Defendants' actions caused injury to Blake Allen, including depriving her of her constitutional rights, loss of reputation, and pain, suffering, and emotional distress.

**FOURTH CAUSE OF ACTION
UNCONSTITUTIONAL OVERBREADTH (42 U.S.C. § 1983)**

158. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 119 of this Complaint.

159. Defendants' HHB Policy violates the First Amendment's Free Speech Clause because it is facially overbroad.

160. Defendants' definitions of "harassment" and "bullying" reach a substantial amount of constitutionally protected speech.

161. By defining "harassment" to include a single "incident" of "verbal" conduct motivated by any of numerous characteristics, including "gender identity," that has the effect of creating an "offensive environment," among other things, Defendants can punish a substantial amount of constitutionally protected speech.

162. By defining "harassment" to mean "conduct directed at the characteristics of a student's "gender identity," including "comments," Defendants can punish a substantial amount of constitutionally protected speech.

163. By defining "bullying" to include "any overt act" that is "repeated over time" and "intended to ridicule, humiliate or intimidate" a student, among other things, Defendants can punish a substantial amount of constitutionally protected speech.

164. The overbreadth of the relevant portions of the HHB Policy chills Blake Allen's speech.

165. Because Defendants took adverse action against Blake Allen under the HHB Policy's definitions of "harassment" and "bullying," Defendants have unconstitutionally discriminated against her because she was engaged in protected expression.

166. Defendants' HHB Policy and its enforcement of that policy are therefore unconstitutionally overbroad and violate Blake Allen's free speech rights under the First Amendment's Free Speech Clause.

167. Defendants' HHB Policy both facially and as applied violates the Free Speech Clause of the First Amendment.

168. Defendants' actions caused injury to Blake Allen, including depriving

her of her constitutional rights, loss of reputation, and pain, suffering, and emotional distress.

PRAYER FOR RELIEF

Wherefore, Plaintiffs ask this Court to enter judgment against Defendants and provide the following relief:

A. A declaratory judgment that Defendants' termination of Travis Allen's employment as middle school girls' soccer coach violated Travis's clearly established rights protected by the First and Fourteenth Amendments of the U.S. Constitution;

B. A declaratory judgment that Defendants' punishment of Blake Allen, including the requirements that she participate in a restorative circle, prepare a reflective essay, and serve out-of-school suspension, violated her clearly established rights protected by the First and Fourteenth Amendments of the U.S. Constitution;

C. A declaratory judgment that Defendants' HHB Policy is unconstitutionally vague and unenforceable on its face and as applied to Blake Allen;

D. A declaratory judgment that Defendants' HHB Policy is unconstitutionally overbroad and unenforceable on its face and as applied to Blake Allen;

E. A preliminary and permanent injunction ordering Defendants, their agents, officials, servants, employees, and any other persons acting on his behalf to:

- i. Reinstatement of Travis Allen as RUHS middle school girls' soccer coach;
- ii. Refrain from taking further action against Travis Allen for having expressed his views on whether a trans-identifying male should be permitted to use the girls' locker room at a time when girls are using the room or would feel uncomfortable, including his reference to a male as a male and use of male pronouns;
- iii. Refrain from taking any action against Travis Allen for having initiated this action; and

iv. Purge from any records in his possession, custody or control any reference to Travis's suspension as middle school girls' soccer coach;

F. A preliminary and permanent injunction ordering Defendants, their agents, officials, servants, employees, and any other person acting on their behalf to:

i. Rescind all disciplinary actions taken against Blake Allen on October 21, including without limitation the requirements that she participate in a restorative circle, prepare a reflective essay, and serve out-of-school suspension;

ii. Refrain from taking further action against Blake Allen for having expressed her views on whether a trans-identifying male should be permitted to use the school locker room for girls at a time when such girls are using the room or would feel uncomfortable, including her reference to a male as a male and use of male pronouns;

iii. Refrain from taking any action against Blake Allen for having participated in this action; and

iv. Purge from any records in their possession, custody or control any reference to the HHB investigation of, or any disciplinary actions taken against, Blake Allen;

G. A preliminary and permanent injunction prohibiting Defendants from enforcing the HHB Policy;

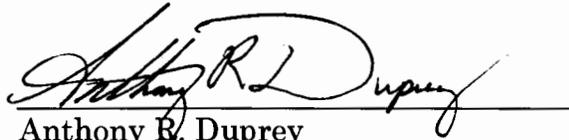
H. Nominal and compensatory damages for the violation of Travis Allen's and Blake Allen's First and Fourteenth Amendment rights;

I. Travis Allen's and Blake Allen's reasonable attorneys' fees, costs, and other disbursements pursuant to 42 U.S.C. § 1988; and

J. Any other relief to which Travis Allen or Blake Allen may be entitled.

Dated: October 27, 2022

Respectfully submitted,



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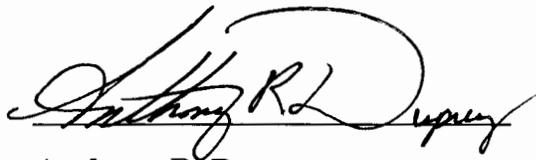
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Counsel for Plaintiffs

**Pro Hac Vice Application Forthcoming*

DEMAND FOR TRIAL BY JURY

Plaintiffs Travis Allen and Blake Allen hereby demand a trial by jury for all issues so triable.

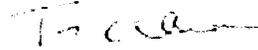


Anthony R. Duprey
Counsel for Plaintiffs

DECLARATION UNDER PENALTY OF PERJURY

I, Travis Allen, a citizen of the United States and a resident of the State of Vermont, declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing Verified Complaint is true and correct to the best of my knowledge.

Executed this 26 day of October, 2022, at Randolph, Vermont.

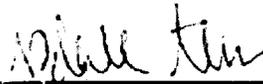


Plaintiff Travis Allen

DECLARATION UNDER PENALTY OF PERJURY

I, Blake Allen, a citizen of the United States and a resident of the State of Vermont, declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing Verified Complaint is true and correct to the best of my knowledge.

Executed this 26 day of October, 2022, at Randolph, Vermont.

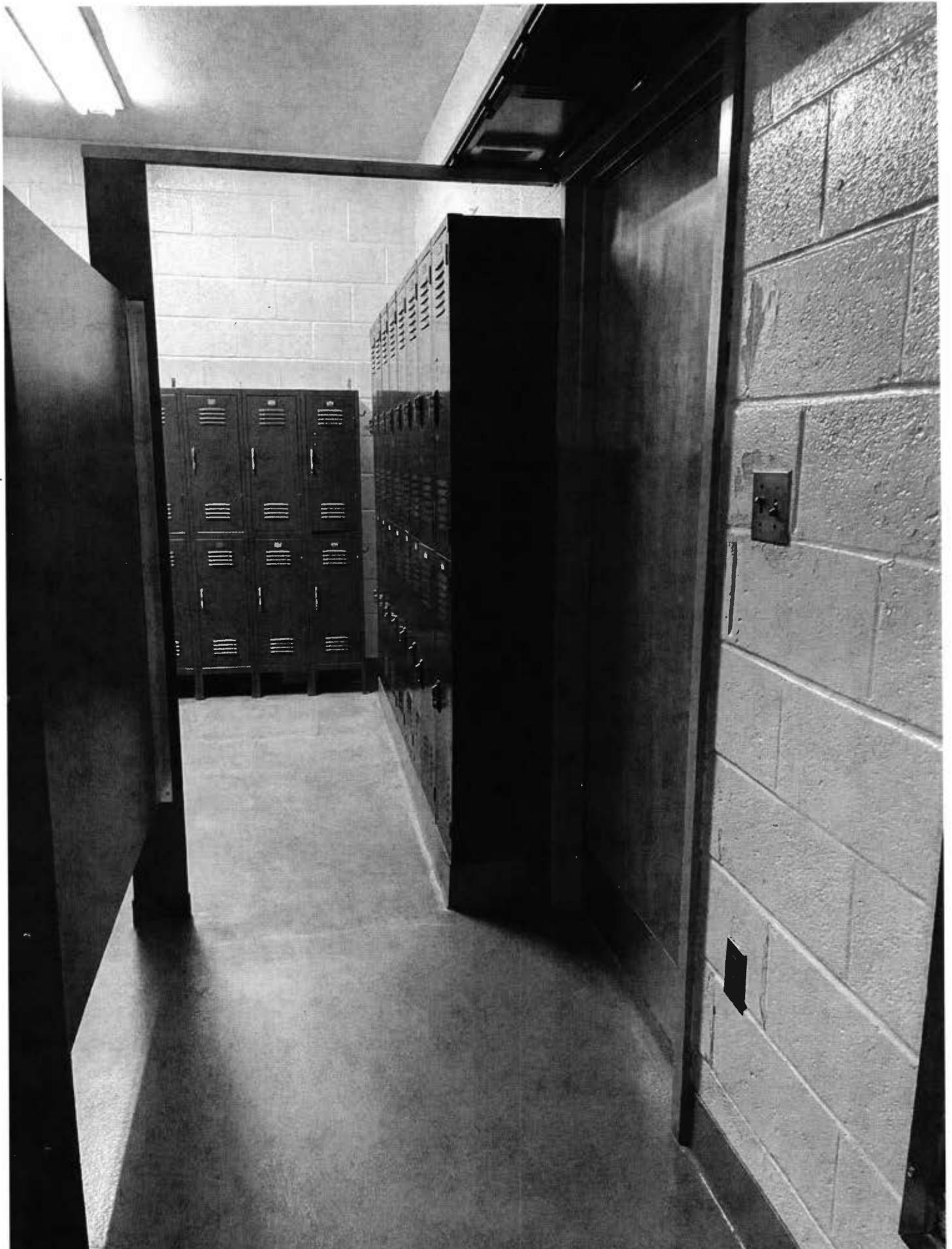


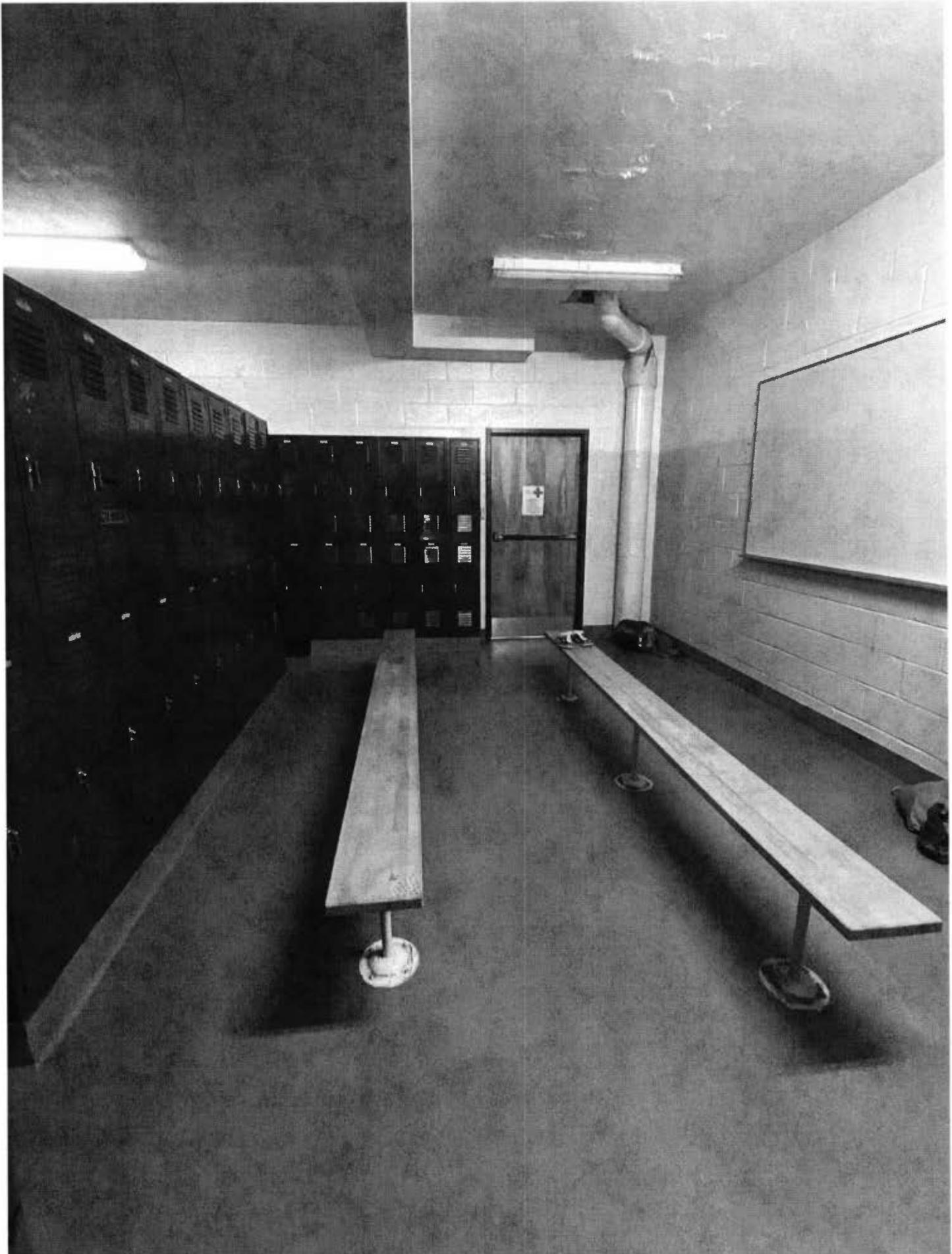
Plaintiff Blake Allen

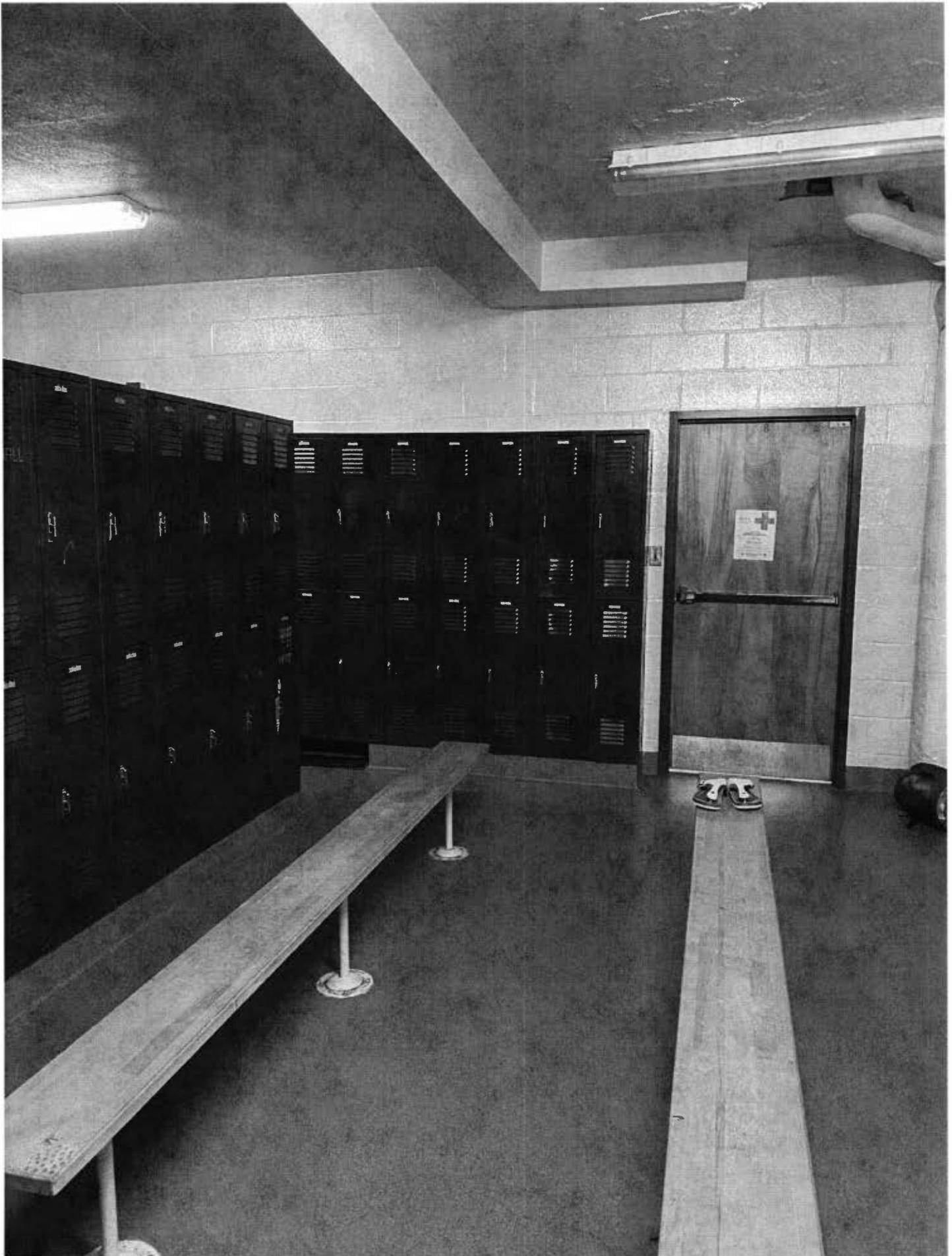
INDEX OF EXHIBITS

- Exhibit 1** Photographs of the RUHS girls' locker room
- Exhibit 2** Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students
- Exhibit 3** Harassment, Hazing and Bullying Policy
- Exhibit 4** Locker room ban notice, September 27, 2022
- Exhibit 5** *Randolph High School investigating gender locker room dispute* WCAX -TV news story, September 28, 2022
- Exhibit 6** Layne Millington email, September 30, 2022
- Exhibit 7** Mother of T.S. Facebook post, September 29, 2022
- Exhibit 8** Travis Allen Facebook post, September 29, 2022
- Exhibit 9** Randolph Union Middle and High School Ethics Agreement for Coaches
- Exhibit 10** Travis Allen termination letter, October 18, 2022
- Exhibit 11** Blake Allen suspension letter, October 21, 2022

EXHIBIT 1









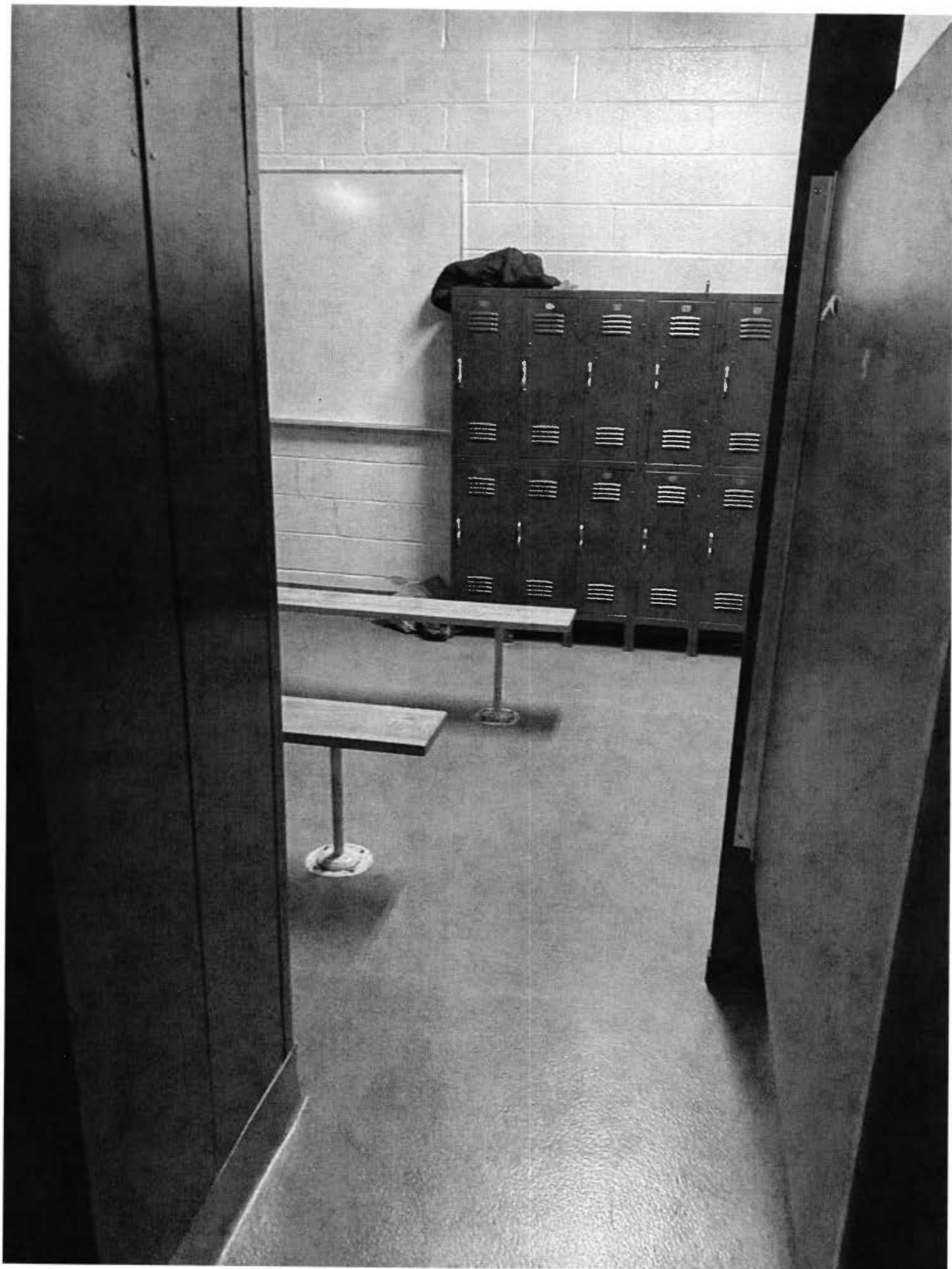








EXHIBIT 2



219 North Main Street, Suite 402
Barre, VT 05641 (p) 802-479-1030 | (f) 802-479-1835

Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students

State Policy

It is the policy of the State of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school. 16 V.S.A. § 570.

State Law

An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation. 9 V.S. A. § 4502(a).

Background

Many questions arise for students and school staff when considering the best supports for transgender and gender nonconforming students. These sample procedures are designed to provide direction for schools to address issues that may arise concerning the needs of transgender and gender nonconforming students. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. Schools should be proactive in creating a school culture that respects and values all students and fosters understanding of gender identity within the school community. These practices are intended to help school and district administrators take steps to create a culture in which transgender and gender nonconforming students feel safe, supported, and fully included, and to meet each school's obligation to provide equal educational opportunities for all students. These practices are intended to help schools ensure a safe learning environment free of discrimination and harassment, and to promote the educational and social integration of transgender students. These procedures do not anticipate every situation that may occur and the needs of each student must be assessed on a case-by-case basis. Every student and school is unique and building administrators should discuss these issues with students and their families and draw on the experiences and expertise of their colleagues as well as external resources where appropriate.

School Climate and Transgender or Gender Nonconforming Students

A national survey conducted 2013 found that 74.1% of lesbian, gay, bisexual and transgender (LGBT) students reported having been verbally harassed in the previous year, 36.2% physically

harassed, and 16.5% physically assaulted.¹ In a different national survey in 2011 found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared with 1.6% of the general population.²

The procedures are based on the following core principles of educational access and equity for all students:

- i. All students have a gender identity which is self-determined.
- ii. All persons, including students attending school, have privacy rights.
- iii. All students have a right to feel safe at school.
- iv. All students have a right to a school environment free from discrimination.

Best Practices require schools to adopt a student-centered focus regarding transgender and gender nonconforming students. No single policy, approach, or accommodation will apply in all circumstances. Schools must determine supports for transgender and gender nonconforming students on a case-by-case basis, informed by the individual student's needs.

Definitions

- “Cisgender” refers to a person whose gender identity corresponds to their assigned sex at birth.
- “Gender Identity” means 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.³
- “Gender expression” refers to the way a person expresses gender to others in ways that are socially defined as either masculine or feminine, such as through behavior, clothing, hairstyles, activities, voice, mannerisms or body characteristics.
- “Gender nonconforming” or “gender creative” people are those whose gender-related identity and/or gender expression do not conform to the social expectations or norms for a person of that sex assigned at birth. Other terms that can have similar meanings include gender variant, gender expansive, gender fluid, or gender atypical.
- “Gender stereotypes” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- “Transgender” is a term which describes an individual whose gender identity or gender expression is different from the individual’s assigned sex at birth.

¹ GLSEN, 2013 *National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools*, xvii (2014).

² Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011).

³ 1 V.S.A. §144, Gender identity defined.

- “Gender transition” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without medical treatments or procedures. [“Transition” refers to the process by which a person socially and/or physically aligns their gender expression more closely to their gender identity and away from that associated with their assigned sex at birth.]⁴
- “Sexual Orientation” refers to a person’s emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender students identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual students display gender nonconforming characteristics.⁵

Discrimination/Harassment

Harassment of a student on the basis of sex can limit or prevent a student from participating in or receiving educational benefits, services or opportunities. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. For example, harassing a student for failing to conform to stereotypical masculine or feminine notions or behaviors constitutes sex discrimination.

Complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status, gender identity or gender nonconformity should be handled in accordance with the Policy on the Prevention of Harassment, Hazing and Bullying of Students. Schools are required to adopt a policy for the prevention of harassment as least as stringent at the Secretary of Education’s model policy. 16 V.S.A. § 570(b). The Secretary’s model policy can be found here:

<http://education.vermont.gov/student-support/healthy-and-safe-schools/school-climate#hhb-model-policy>

Vermont law defines harassment at 16 V.S.A. §11a(26(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 or a student’s family member’s actual or perceived race, creed, color, national origin, marital status, **sex, sexual orientation, gender identity** or disability 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.

⁴ State of New York Policy Guidance, 2015

⁵ Id. (citing California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014)).

Privacy

Except as set forth herein, school personnel should not disclose information that may reveal a student's transgender or gender nonconforming status. Under the Family Educational Rights and Privacy Act (FERPA), only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records. Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA. Transgender or gender nonconforming students have the ability, as do all students, to discuss and express their gender identity and gender expression openly and decide when, with whom, and how much of their private information to share with others.

Schools should work closely with the student and family, if appropriate, in devising an appropriate plan regarding the confidentiality of the student's transgender or gender nonconforming status that works for both the student and the school. The support of the student's family may vary. In adopting a student-centered approach, a school can best support a transgender student by involving the student regarding how and what information about the student is shared within the school and between the school and the student's home. Some parents may be very supportive and advocate for the student with the school. Other students may not have a supportive home environment. In those cases, schools should develop a plan for information sharing which supports the student, while balancing a parent's right to information. Any plan for sharing information must comply with all applicable laws, regulations, policies and guidelines. Privacy considerations may also vary with the age of the student.

In some cases, transgender and gender nonconforming students may feel more supported and safe if other students are aware of their gender identity. In these cases, school staff should work closely with the student, families and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage external resources to assist with educational efforts.

A list of additional resources and information can be found at the end of this document, including contact information for Outright Vermont (a local support organization) and the Vermont Human Rights Commission, which investigates claims of discrimination under Vermont's anti-discrimination laws.

Official Records

For grades 9-12, the transcripts of all students must be permanently maintained; academic records may be permanently maintained. See State Board of Education Rule 2113.

To the extent that the school is not legally required to use a student's legal name or sex assigned at birth on school records and other documents, the school should use the name and gender preferred by the student. This may require the school to maintain two sets of records (one with the student's legal name and sex assigned at birth kept separate from routine school records) to avoid inadvertent disclosure.

With respect to student medical records, school nurses and other licensed professionals need accurate and reliable information in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health providers or licensed professionals, as well as to file health insurance claims with other organizations such as Medicaid. Nurses are required to accurately document clinical information relating to a patient and are also required to keep patient health records confidential. In the case of a transgender student, a school nurse should use the student's chosen/preferred name, and should use the student's birth name only when necessary to ensure the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care providers or licensed professionals, as well as to file health insurance claims.

Under FERPA, students who are 18 and older or parents of students under 18 may request a change to the student's name and gender in educational records based on a claim that such records are incorrect, misleading or a violation of privacy. A student's permanent pupil record should be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.

For a legal change of gender, the student must provide a birth certificate indicating the student's legal gender. 18 V.S.A. § 5112 (2011).

In all cases, in order to ensure that records accurately reflect circumstances in effect at the time each record was made, that record can be cross-referenced, and in order to maintain the confidentiality of the student's transgender status to the extent possible, the former name and/or gender will be maintained in archived data in the AOE's central database.

Names/Pronouns

Students should be addressed by school staff by the name and pronoun corresponding to their gender identity. Students are not required to obtain a court ordered name and/or gender change or to change their pupil personnel records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. To the extent possible and consistent with these guidelines, school personnel should make efforts to maintain the confidentiality of the student's transgender status. For those students who undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the preferred name and pronouns consistent with the student's gender identity. The plan can also include when and how this is communicated to students and their parents, staff and other individuals within the school community (i.e., substitute teachers, bus drivers, athletic coaches, etc.)

Within the school or school district when a transgender or gender nonconforming student new to a school is using a chosen/preferred name and gender identity, their birth name and assigned sex should be kept confidential by school and district staff. If a student has previously been known at school or in school records by his or her birth name, the school administrator should direct school personnel to use the student's chosen/preferred name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for

example, attendance records, report cards, Individualized Education Programs, etc.) with the student's chosen/preferred name and appropriate gender markers and not circulate records with the student's birth name and assigned sex.

Student IDs should be issued in the name that reflects a student's gender identity.

Sports and Physical Education

Transgender and gender nonconforming students are to be provided the same opportunities to participate in physical education as are all other students. Generally, students should be permitted to participate in physical education and sports in accordance with the student's gender identity. Participation in competitive athletic activities and sports will be resolved on a case-by-case basis. Schools should refer to the Vermont Principal's Association Activities/Athletics Policies: Article 1 Section 2.

Restroom and Locker Room Accessibility

The use of restrooms and locker rooms by transgender students requires schools to consider numerous factors, including, but not limited to: the transgender student's preference; protecting student privacy; maximizing social integration of the transgender student; minimizing stigmatization of the student; ensuring equal opportunity to participate; the student's age; and protecting the safety of the students involved.

A transgender student should not be required to use a locker room or restroom that conflicts with the student's gender identity.

Schools may consider including gender neutral restrooms into the design of new construction and/or building renovation.

Gender Segregation in Other Areas

As a general rule, in any other circumstances where students are separated by gender in school activities (i.e. overnight field trips), students should be permitted to participate in accordance with their gender identity. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case-by-case basis considering the factors set forth above.

AOE gratefully acknowledges the assistance of Outright and GLAD in the creation of these best practices.

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;

Family Educational Rights and Privacy Act; 20 U.S.C. §1232g;

Public Accommodations Act, 9 V.S.A. §§4500 et seq.;

Education, Classifications and Definitions, 16 V.S.A. §11(26);(30)(A);(32);

Sample resources from Vermont and other states:

- Outright Vermont: www.outrightvt.org
- The Vermont Human Rights Commission: <http://hrc.vermont.gov/>
- GLAD: <http://www.glad.org/>

California

California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*

<http://www.csba.org/~media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx>

District of Columbia

<http://dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance>

New York

http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf

The Human Rights Campaign, in collaboration with the ACLU, the NEA, Genderspectrum and NCLR

<http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf>

Frequently Asked Questions

1. What happens when a student transitions at school and requests that school personnel not share information with the parent(s)?

School personnel should analyze each situation using a student-centered or student-focused approach. If the student feels more supported and safe in transitioning at school and does not want this information shared with the parent (or guardian), school personnel should honor the student's request. Transgender and gender nonconforming students may not have talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance. In order for a school to provide information legally required to be shared with parents, may require the school to maintain two sets of records. The student may request that all correspondence between the school and the home use only the student's legal name and assigned sex. School personnel should discuss with the student first before discussing the student's gender identity with the student's parent or guardian and how written communication with the parent's or guardian will refer to the student (preferred/chosen name and/or preferred pronouns or legal name).

2. How have other schools handled the privacy of transgender and gender nonconforming students?

In a case involving a student in Massachusetts, parents of a transgender male-to-female elementary school student requested that only the school principal and the school nurse be aware that the student was assigned the sex of male at birth. After a discussion with the school principal, the parents agreed that the student's teacher, the school secretary, and the district superintendent would also be informed. In this situation, the school principal kept the student's birth certificate in a separate, locked file that only the principal could access, and put a note in the student's other file saying that the principal had viewed the student's birth certificate. In another situation, where a biological male came to school after April vacation as a girl, the school principal and guidance counselor, in collaboration with the student and her parents, developed a plan for communicating information regarding the student's transition to staff, parents, and students. The plan included who was going to say what to whom, and when the communication would take place.⁶

3. Will all bathrooms and locker rooms require modifications to accommodate transgender and gender nonconforming students?

Not necessarily. Any student may desire additional privacy in using a bathroom or locker room. A transgender or gender nonconforming student may request additional privacy within a locker room or other changing room. Similarly, other students may

⁶ *Guidance for Massachusetts Public Schools, Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity*, Massachusetts Department of Elementary and Secondary Education, 2012.

request additional privacy in changing clothes in a locker room or changing area used by a transgender or gender nonconforming student. These situations must be handled with concern for the privacy concerns of all involved. In using a student-centered approach, the transgender or gender nonconforming student may request a separate space, or may not. In any event, a transgender or gender nonconforming student must not be forced to use a separate space or use a space inconsistent with their asserted gender identity. Schools may provide a single stall with a door or curtain to provide privacy for any student who desires extra privacy within a common locker room or changing area (or bathroom).

EXHIBIT 3

**ADDENDUM TO
RANDOLPH UNION 2022-2023 STUDENT HANDBOOK
10.7.2022**



The world is before you
and you need not take it or leave it
as it was when you came in.

- James Baldwin

**POLICY C10: PREVENTION OF HARASSMENT, HAZING AND BULLYING
POLICY C12: PREVENTION OF SEXUAL HARASSMENT AS PROHIBITED BY
TITLE IX**

POLICY C10: PREVENTION OF HARASSMENT, HAZING AND BULLYING (POLICY)

Policy Statement

The Orange Southwest School District 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.

It is the policy of the District to prohibit unlawful harassment of students based on race, color, religion, creed, national origin, marital status, sex, sexual orientation, gender identity or disability. Harassment may also constitute a violation of Vermont's Public Accommodations Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and/or Title IX of the Federal Education Amendments of 1972.

It is also the policy of the District to prohibit the unlawful hazing and bullying of students. Conduct which constitutes hazing may be subject to civil penalties.

The District shall address all complaints of harassment, hazing and bullying according to the procedures accompanying this policy, and shall take appropriate action against any person - subject to the jurisdiction of the board - who violates this policy. Nothing herein shall be construed to prohibit punishment of a student for conduct which, although it does not rise to the level of harassment, bullying, or hazing as defined herein, otherwise violates one or more of the board's disciplinary policies or the school's code of conduct.

The Procedures are expressly incorporated by reference as though fully included within this Policy. The Procedures are separated from the policy for ease of use as may be required.

Implementation

The Superintendent or her/his designee shall:

1. Adopt a procedure, directing staff, parents and guardians how to report violations of this policy and file complaints under this policy. (See Procedures on the Prevention of Harassment, Hazing and Bullying of Students)
2. Annually, select two or more designated employees to receive complaints of hazing, bullying and/or harassment at each school campus and publicize their availability in any publication of the District that sets forth the comprehensive rules, procedures, and standards of conduct for the school.
3. Designate an Equity Coordinator to oversee all aspects of the

implementation of this policy as it relates to obligations imposed by federal law regarding

discrimination. This role may be also be assigned to one or both of the Designated Employees.

4. Respond to notifications of possible violations of this policy in order to promptly and effectively address all complaints of hazing, harassment, and/or bullying.
5. Take action on substantiated complaints. In cases where hazing, harassment and/ or bullying is substantiated, the District shall take prompt and appropriate remedial action reasonably calculated to stop the hazing, harassment 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 termination for employees and, for students, expulsion or removal from school property. It may also involve penalties or sanctions for both organizations and individuals who engage in hazing. Revocation or suspension of an organization's permission to operate or exist within the District's purview may also be considered if that organization knowingly permits, authorizes or condones hazing.

Constitutionally Protected Speech

It is the intent of the District 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 policy is to (1) prohibit conduct or communication that is directed at a person's protected characteristics as defined below and that has the purpose or effect of substantially disrupting the educational learning process and/or access to educational resources or creates a hostile learning environment; (2) prohibit conduct intended to ridicule, humiliate or intimidate students in a manner as defined under this policy.

Definitions

For the purposes of this policy and the accompanying procedures, the following definitions apply:

- A. **"Bullying"** means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:
 - a. Is repeated over time;
 - b. Is intended to ridicule, humiliate, or intimidate the student; and
 - c. (i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school

day on a school bus or at a school sponsored activity; or
(ii) does not occur during the school day on school property, on a school bus or at a school sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs.

- B. **“Complaint”** means an oral or written report information provided 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 hazing, harassment or bullying.
- C. **“Complainant”** means a student who has provided oral or written information about conduct that may rise to the level of hazing, harassment or bullying, or a student who is the target of alleged hazing, harassment or bullying.
- D. **“Designated employee”** means an employee who has been designated by the school to receive complaints of hazing, harassment and bullying pursuant to subdivision 16 V.S.A. 570a(a)(7). The designated employees for each school building are identified in Appendix A of this policy.
- E. **“Employee”** includes any person employed directly by or retained through a contract with the District, an agent of the school, a school board member, a student teacher, an intern or a school volunteer. For purposes of this policy, “agent of the school” includes school district staff.
- F. **“Equity Coordinator”** is the person responsible for implementation of Title IX (regarding sex - based discrimination) and Title VI (regarding race - based discrimination) for the District and for coordinating the District's compliance with Title IX and Title VI in all areas covered by the implementing regulations. The Equity Coordinator is also responsible for overseeing implementation of the District's Preventing and Responding to Harassment of Students and Harassment of Employees policies. This role may also be assigned to Designated Employees.
- G. **“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 or a student's family member's actual or perceived race, creed, color, national origin, marital status, disability, sex, sexual orientation, or gender identity, 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, which means unwelcome conduct of a sexual nature, that includes sexual violence/sexual assault, sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:
 - a. Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education, academic status, or progress; or
 - b. Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

Sexual harassment may also include student – on - student conduct or conduct of a non - employee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is severe, persistent or pervasive so as to deny or limit the student's ability to participate in or benefit from the educational program on the basis of sex.

- (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.

H. **“Hazing”** means any intentional, knowing or reckless act committed by a student, whether individually or in concert with others, against another

student: In connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with the educational institution; and

(1) Which is intended to have the effect of or should reasonably be expected to have the effect of endangering the mental or physical health of the student.

Hazing shall not include any activity or conduct that furthers legitimate curricular, extra-curricular, or military training program goals, provided that:

- (1) The goals are approved by the educational institution; and
- (2) The activity or conduct furthers the goals in a manner that is appropriate, contemplated by the educational institution, and normal and customary for similar programs at other educational institutions.

With respect to Hazing, "Student" means any person who:

- (A) is registered in or in attendance at an educational institution;
- (B) has been accepted for admission at the educational institution where the hazing incident occurs; or
- (C) intends to attend an educational institution during any of its regular sessions after an official academic break.

- I. **"Notice"** means a written complaint or oral information that hazing, harassment or bullying may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the hazing, harassment or bullying, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. If the school learns of possible hazing, harassment or bullying through other means, for example, if information about hazing, harassment or bullying is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. In addition, for purposes of violations of federal anti-discrimination laws, notice may occur when an

employee of the district, including any individual who a student could reasonably believe has this authority or responsibility, knows or in the exercise of reasonable care should have known about potential unlawful harassment or bullying.

- J. **“Organization”** means a fraternity, sorority, athletic team, association, corporation, order, society, corps, cooperative, club, or other similar group, whose members primarily are students at an educational institution, and which is affiliated with the educational institution.

- K. **“Pledging”** means any action or activity related to becoming a member of an organization.

- L. **“Retaliation”** is any adverse action by any person against a person who has filed a complaint of harassment, hazing or bullying 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.

- M. **“School administrator”** means a superintendent, principal or his/her designee assistant principal//technical center director or his/her designee and/or the District’s Equity Coordinator.

- N. **“Student Conduct Form”** is a form used by students, staff, or parents, to provide, in written form, information about inappropriate student behaviors that may constitute hazing, harassment and/or bullying.

APPENDIX A

Equity Coordinators:

Kayla Link, Director of Special Education (802) 728-5052

klink@orangesouthwest.org

Robin Pembroke, Chief Financial Officer

(802) 728-5052

mpembroke@orangesouthwest.org

Designated Employees:

The following employees have been designated by the District to receive complaints of bullying and/or harassment pursuant to this policy and 16 V.S.A § 570a(a)(7) and 16 V.S.A. §570c(7) and under federal discrimination laws;

Orange Southwest School District

Kayla Link: Director of Special Education (802) 728-5052

klink@orangesouthwest.org

Heather Lawler: Assistant Superintendent

(802) 728-5052

hlawler@orangesouthwest.org

Randolph Elementary School

Melinda Robinson

(802) 728-9555

mrobinson@orangesouthwest.org

Braintree Elementary School

Pattie Sprague, Principal

(802) 728-9373

psprague@orangesouthwest.org

Corinne Scoppe

(802) 728-9373

cscoppe@orangesouthwest.org

Brookfield School

David Roller, Principal

(802) 276-3153

droller@orangesouthwest.org

Coinne Scoppe

(802) 276-3153

cscoppe@orangesouthwest.org

Randolph Union High School

Beverly Taft, School Counsellor

(802) 728-3397

btaft@orangesouthwest.org

Kara Merrill, School Counsellor

(802) 728-3397

kmerrill@orangesouthwest.org

Randolph Technical Career Center

Felicia Allard, Director

(802) 728-9595

fallard@orangesouthwest.org

Gary Clark, Dean of Students

(802) 728-9595

gclark@orangesouthwest.org

Date Warned:

March 9th 2020

Date Adopted:

April 13th 2020

**POLICY C10-P: PREVENTION OF HARASSMENT, HAZING AND BULLYING
(PROCEDURES)**

I. Reporting Complaints of Hazing, Harassment and/or Bullying

- A. Student Reporting:** Any student who believes that s/he has been hazed, harassed and/or bullied under this policy, or who witnesses or has knowledge of conduct that s/he reasonably believes might constitute hazing, harassment and or/ bullying, 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 hazing, harassment 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.

Any school employee who overhears or directly receives information about conduct that might constitute hazing, harassment 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.

- C. Other Reporting:** Any other person who witnesses conduct that s/he reasonably believes might constitute hazing, harassment and/or bullying under this policy should promptly report the conduct to a designated employee.
- D. Documentation of the Report:** If the complaint is oral, the designated employee shall promptly reduce the complaint to writing in a Student Conduct Form, including the time, place, and nature of the alleged conduct, the identity of the complainant, alleged perpetrator, and any witnesses. Both the complainant and the alleged perpetrator will have the right to present witnesses and other evidence in support of their position.
- E. False Complaint:** Any person who knowingly makes a false accusation regarding hazing, harassment and/or bullying 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 hazing, harassment and/ or bullying when the person has a good faith belief that hazing, harassment and/or bullying occurred or is occurring.

F. Rights to 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

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

II. Responding to Notice of Possible Policy Violation(s)

- A. Upon notice of information that hazing, harassment and/or bullying may have occurred the designated employee shall:
1. Promptly reduce any oral information to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant.
 2. Promptly inform the school administrator(s) of the information; iii. If in the judgment of the school administrator, the information alleges conduct which may constitute harassment, hazing or bullying, the school administrator shall, as soon as reasonably possible, provide a copy of the policy on hazing, harassment and bullying and these procedures to the complainant and accused individual, or if either is a minor, cause a copy to be provided or delivered to their respective parent or guardian.
- B. Upon initiation of an investigation, the designated employee shall: Notify in writing both the complainant and accused individual (or if either is a minor inform their respective parent or guardian) that:

1. an investigation has been initiated;
2. retaliation is prohibited;
3. all parties have certain confidentiality rights; and
4. they will be informed in writing of the outcome of the investigation.

C. All notifications shall be subject to state and/or federal laws protecting the confidentiality of personally identifiable student information. Pursuant to 34 CFR Part 99.30, a school administrator may seek the consent of the parent/guardian of the accused student, or the accused eligible student (if 18 or older, the accused student has the ability to consent), in order to inform the complainant of any disciplinary action taken in cases where the school determined that an act(s) of harassment, hazing, and/or bullying, or other misconduct occurred. The parent/ guardian or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records.

III. Investigating Hazing, Harassment and/or Bullying Complaints

A. Initiation of Investigation - Timing. 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 or bullying.

B. Investigator Assignment. 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.

C. Interim Measures. It may be appropriate for the school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes and/or transportation pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the

student to transfer to a different class may be appropriate. In all cases, the school will make every effort to prevent disclosure of the names of all parties involved – the complainant, the witnesses, and the accused -- except to the extent necessary to carry out the investigation.

In all cases where physical harm has resulted and/or where the targeted student is known to be expressing suicidal ideation, or experiencing serious emotional harm, a safety plan will be put in place. Safety plans must also be considered in cases where the targeted student is known to have difficulty accessing the educational programs at the school as a result of the inappropriate behavior. No contact orders, or their enforcement, may also be appropriate interim measures.

D. Due Process. The United States Constitution guarantees due process to students and District employees who are accused of certain types of infractions, including but not limited to sexual harassment under Federal Title IX. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding, including but not limited to the ability of the complainant and the accused to present witnesses and other evidence during an investigation. The District will ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

E. Standard Used to Assess Conduct. In determining whether the conduct constitutes a violation of this policy, the investigator shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. The complainant and accused will be provided the opportunity to present witnesses and other evidence during an investigation. The school will also consider the impact of relevant off-campus conduct on the school environment 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. Whether a particular action constitutes a violation of this policy requires determination based on all the facts and surrounding circumstances.

F. Completion of Investigation – Timing. 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.

G. Investigation Report. The investigator shall prepare a written report to 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 hazing, harassment and/or bullying. The report, when referencing student conduct, is a student record and therefore confidential. It will be made available to investigators in the context of a review conducted by either Vermont AOE, or investigations of harassment conducted by the Vermont Human Rights Commission or U.S. Department of Education Office of Civil Rights.

H. Notice to Students/Parents/Guardians. Within five school days of the conclusion of the investigation, the designated employee shall:

- i. Notify in writing both the complainant and accused individual (or if either is a minor inform their respective parent or guardian) that:
 1. the investigation has been completed;
 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 unless the parent/guardian of the accused student and/or the accused eligible student consents to such disclosure, pursuant to 34 CFR Part 99.30, as set forth in Section II, Part C, above.
- ii. Notify the Complainant Student - or if a minor, their parent(s) or guardian - in writing of their rights to:
 1. an internal review by the school of its initial determination as a result of its investigation as to whether harassment occurred;
 2. request an Independent Review of the school's "final" determination as to whether harassment occurred within thirty (30) days of the final determination or although a "final" determination was made that harassment indeed occurred the school's response to that harassment was inadequate to correct the problem; and that the review will be conducted by an investigator to be selected by the

- superintendent from a list developed by the Agency of Education;
 - 3. file complaints of harassment with either the Vermont Human Rights Commission and/or the federal Department of Education's Office of Civil Rights.
- iii. Notify the Accused Student – or if a minor, their parent(s) or guardian - in writing of their right to appeal as set forth in Section V of these procedures.

I. Violations of Other Policies. In cases where the investigation has identified other conduct that may constitute a violation of 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 or codes of conduct.

IV. Responding to Substantiated Claims

A. Scope of Response. After a final determination that an act(s) of hazing, harassment and/or bullying has been committed, the school shall take prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the hazing, harassment and/or bullying and prevent any recurrence of harassment, hazing and/or bullying, and remedy its effects on the victim(s). In so doing, the following should be considered:

- (i) Potential Remedial Actions. Remedial action may include but not be limited to an age appropriate 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. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the hazing, harassment and/or bullying.

To prevent recurrences counseling for the offender may be appropriate to ensure that he or she understands what constitutes hazing/harassment and/ or bullying and the effects it can have. Depending on how widespread the hazing/harassment/bullying was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents and teachers can recognize hazing/ harassment/bullying if it recurs and know how to respond.

(ii) School Access/Environment Considerations. The District will also take efforts to support victims' access to the District's programs, services and activities and consider and implement school-wide remedies, where appropriate. Accordingly, steps will be taken to eliminate any hostile and/ or threatening environment that has been created. For example, if a female student has been subjected to harassment/bullying by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment/bullying occurred, the District will assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record.

Other measures may include, if appropriate, directing a bully/ harasser to apologize to the affected student. If a hostile environment has affected the entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and/or bullying and will be responsive to any student who reports that conduct.

(iii) Hazing Case Considerations. Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing.

(iv) Other Remedies: Other remedies may include providing counseling to the victim(s) and/or the perpetrator(s), and additional safety planning measures for the victim(s).

B. Retaliation Prevention. 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.

The District will take reasonable steps to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses. At a minimum, this includes making sure that the students and their parents, and those witnesses involved in the school's investigation, know how to report any subsequent problems and making followup inquiries to see if there are have been any new incidents or any retaliation.

C. Alternative Dispute Resolution. 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. Certain considerations should be made before pursuing alternative dispute resolution methods, including, but not limited to: (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 and relative power differential between the target and accused individual, or any history of repeated misconduct/harassment by the accused individual.

V. Post Investigative Reviews Rights of Complainants

A. Internal Review of Initial Harassment Determinations By Complainant. A complainant or parent of a complainant may request internal review by the District of a designee's initial determination (following investigation) that harassment has not occurred via written request submitted to the District superintendent. All levels of internal review of the investigator's initial determination, and the issuance of a final decision, shall, unless special circumstances are present and documented by the District, be completed within 30 calendar days after review is requested.

B. Independent Reviews of Final Harassment Determinations By Complainant. A complainant may request an independent review within thirty (30) 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 complainant shall make such a request in writing to the superintendent of schools within thirty (30) days of a final determination. Upon such request, the superintendent shall promptly initiate an independent review by a neutral person as described under 16 V.S.A. § 570a.(b)(1) 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 Secretary of Education.

The reviewer shall advise the student of other remedies 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. The District may request an independent review at any stage of the process.

C. Rights to Alternative Harassment 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

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

Rights of Accused Students

A. Appeal. Any person determined to have engaged in an act(s) of hazing, harassment and/or bullying may appeal the determination and/or any related disciplinary action(s) taken, directly to the school board of the school district.

The school board shall conduct a review on the record. The standard of review by the school board shall be whether the finding that an act(s) of hazing, harassment, and/or bullying has been committed constitutes an abuse of discretion by the school level fact finder. Appeals should be made to the school board within ten (10) calendar days of receiving the determination that an act(s) of hazing, harassment and/or bullying has occurred and/or any announced discipline. The school board shall set the matter for a review hearing at the next scheduled school board meeting to the extent practicable, but not later than 30 days from receipt of the appeal filing.

B. Accused Student/Appellant Access to Investigative Reports/Findings. 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 on appeal that can be redacted and de-identified in compliance with the requirements set forth at 34 CFR Part 99. For those documents that cannot be provided due to the requirements set forth at 34 CFR Part 99, when an Accused Student/ Appellant seeks a review on the record before the school board of the school district, a school administrator may seek the consent of the parent/ guardian of the targeted student, or the accused eligible targeted student (if 18 or older, the targeted student has the ability to consent), in order to inform the accused student of the findings which gave rise to the school's determination that an act(s) of harassment, hazing, and/or bullying occurred. The parent/guardian or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records.

VI. Confidentiality and Record Keeping

A. Privacy Concerns. The privacy of the complainant, the accused individual, and the witnesses shall be maintained consistent with the District'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.

i. Concerns Related to Harassment Complaints. The scope of appropriate response to a harassment complaint may depend upon whether a student or parent of a minor student reporting the harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, school officials will discuss confidentiality standards and concerns with the complainant initially. The school will inform the student that a confidentiality request may limit the school's ability to respond. The school will remind the student that both federal Title IX and Vermont Title 9 prevent retaliation and that if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong action if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

The school will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors the school might consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result. If information about the incident is contained in an "education record" of the student alleging the harassment, as defined by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school will consider whether FERPA prohibits it from disclosing information without the student's consent.

B. Document Maintenance. 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 in a confidential file accessible only to authorized persons. All investigation records created in conformance with this model policy and model procedures, including but not limited to, the complaint form, interview notes, additional evidence, and the investigative report, shall be kept by the Equity Coordinator, Designated Employees and District/Supervisory Union Central Office for at least six years after the investigation is completed.

VII. Reporting to Other Agencies

A. Reports to Department of Children and Families. 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.

B. Reports to Vermont Agency of Education. If a harassment complaint is made in a public school about conduct by a licensed educator that might be grounds under Vermont law 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 Vermont law for licensing action, the head of school is encouraged to report the alleged conduct to the Secretary of Education.

C. Reporting Incidents to Police

a. **FERPA Rights.** Information obtained and documented by school administration regarding the school's response to notice of student conduct that may constitute hazing, harassment 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.

- b. Firsthand Reports. Nothing in this policy shall preclude persons from reporting incidents and/or conduct witnessed first-hand that may be considered to be a criminal act to law enforcement officials.
- c. Hazing Incidents. It is unlawful to (1) engage in hazing; (2) solicit direct, aid, or attempt to aid, or abet another person engaged in hazing; or (3) knowingly fail to take reasonable measures within the scope of the person's authority to prevent hazing. It is not a defense in an action under this section that the person against whom the hazing was directed consented to or acquiesced in the hazing activity. Hazing incidents will be reported to the police in a manner consistent with the confidentiality rights set forth above in this section.

D. Continuing Obligation to Investigate. Reports made to either DCF or law enforcement shall not be considered to absolve the school administrators of their obligations under this policy to pursue and complete an investigation upon receipt of notice of conduct which may constitute hazing, harassment and/or bullying.

VIII. Disseminating Information, Training, and Data Reporting

A. Disseminating Information. Annually, prior to the commencement of curricular and co-curricular activities, the District shall provide notice of this policy and procedures to students, custodial parents or guardians of students, and staff members, including references to the consequences of misbehavior contained in the plan required by 16 V.S.A. 1161a. Notice to students shall be in age- appropriate language and include examples of hazing, harassment and bullying. At a minimum, this notice shall appear in any publication of the District that sets forth the comprehensive rules, procedures and standards of conduct for the District.

B. Student Training. The school administrator shall use his/her discretion in developing age-appropriate methods of discussing the meaning and

substance of this policy with students to help prevent hazing, harassment and bullying.

C. Staff Training. The board or its designee shall ensure that teachers and other staff receive training in preventing, recognizing and responding to hazing, harassment and bullying.

D. Data Gathering. Public school districts shall provide the Vermont Agency of Education with data requested by the Secretary of Education.

Date Warned:

March 9th 2020 Date Adopted April 13th 2020

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 Act, 9 V.S.A. §§4500 et seq.; Education, Classifications and Definitions, 16 V.S.A. §11(26);(30)(A);(32); Education, 16 V.S.A. §140(a)(1); Education, 16 V.S.A. §166(e); Education, Bullying, 16 V.S.A. §570c; Education, Harassment, Hazing and Bullying, 16 V.S.A. § 570; Education, Harassment, 16 V.S.A. §570a; Education, Harassment, 16 V.S.A. §570c; Education, Harassment, 16 V.S.A. §570f; Education, Hazing, 16 V.S.A. §570b; Education, Hazing, 16 V.S.A. §570f 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).

POLICY C12: PREVENTION OF SEXUAL HARASSMENT AS PROHIBITED BY TITLE IX

I. Statement of Policy.

A. **Prohibiting Title IX Sexual Harassment.** Per Title IX of the Education Amendments Act of 1972 (“Title IX”) the District does not discriminate on the basis of sex in its educational programs and activities, including employment and admissions. All forms of sex-based discrimination, including sexual harassment, are prohibited in the District. A District with actual knowledge of sexual harassment in an educational program or activity of the District against a person in the United States must respond promptly in a manner that is not deliberately indifferent. A District is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. A District may be deemed to have been deliberately indifferent based on its restriction of rights protected under the U.S. Constitution, including the First, Fifth and Fourteenth Amendments.

B. **Retaliation.** Retaliation as defined by this Policy is expressly prohibited. Complaints alleging retaliation may be filed according to the Title IX Grievance Procedures set forth in Section IV.

C. **Concurrent Statutory Obligations.** While all forms of sex-based discrimination are prohibited in the District, the purpose of this policy is to address, and only address, *sexual harassment as defined in Title IX and Section II.M. below*. For conduct which satisfies that definition, a school’s response is governed by this policy, and in those cases for which they have received a filing of a formal complaint of same, as set forth under the Title IX Grievance Process set forth in Section IV below. For other forms of inappropriate conduct, or conduct which may satisfy the definition of harassment on the basis of sex under Vermont law, including student misconduct and employment based statutes prohibiting unlawful harassment and other forms of misconduct, the District may have the separate obligation to address those behaviors as required by other school policies and applicable laws.

D. **Covered Parties.** This Policy shall apply to all students, employees and any third party who contracts with the District to provide services to District students or employees, upon District property or during any school program or activity. A third party under supervision and control of the school system will be subject to termination of contracts/agreements,

restricted from access to school property, and/or subject to other consequences, as appropriate.

II. Definitions

As used in this Policy and during the Title IX Grievance Process, the terms below shall have the meaning ascribed.

A. **“Actual Knowledge”** means “notice” of “sexual harassment” or allegations of “sexual harassment” to either (a) a recipient’s Title IX Coordinator; or (b) any official of the recipient who has the authority to institute corrective measures on behalf of the recipient; or (c) to any employee of an elementary and secondary school.

1. For purposes of this paragraph “sexual harassment” refers to the definition as contained *within this policy*. For other forms of inappropriate conduct, or conduct which may satisfy the definition of harassment on the basis of sex as recognized under Vermont law, schools retain the option and in some cases the obligation, to address those behaviors as required by policy and law.
2. Actual knowledge shall not be deemed to exist when the only official of the recipient with actual knowledge is the respondent.
3. “Notice” as used in this paragraph includes, but is not limited to, a Report of Sexual Harassment to the Title IX Coordinator as described Section IV.B.
4. Notice sufficient to trigger an obligation under this policy only shall exist where any employee has sufficient personal knowledge of alleged facts to be aware that if such facts were found to be true it would constitute a violation of this policy.
5. Imputation of knowledge based solely on vicarious liability OR constructive notice shall be insufficient to establish or constitute actual knowledge.

B. **“Complainant”** is an individual who is alleged to be the victim of conduct that could constitute “sexual harassment” under this Policy. In order for an individual to be considered to be a Complainant they need not file Report of Sexual Harassment, nor a Formal Complaint of Sexual

Harassment. Where the Title IX Coordinator signs a Formal Complaint of Sexual Harassment, the Title IX Coordinator is not considered a “Complainant.”

C. “**Days**” shall mean calendar days, but shall exclude non-weekend days on which the District office is closed (e.g. holidays, office-wide vacations), or any weekday during the school year on which school is closed (e.g. snow days).

D. “**Decision-Maker**” means persons tasked with either the responsibility of making determinations of responsibility (referred to as “Initial Decision-Maker”); or the responsibility to decide any appeal (referred to as “Appellate Decision-Maker”) with respect to Formal Complaints of Sexual Harassment in accordance with the Title IX Grievance Process.

E. “**Determination of Responsibility**” is the formal finding by the decision-maker on each allegation of Sexual Harassment contained in a Formal complaint that the Respondent did or did not engage in conduct constituting Sexual Harassment under Title IX.

F. “**Disciplinary sanctions**” are consequences imposed on a Respondent when s/he is determined responsible for sexual harassment prohibited under this Policy.

F. “**Emergency Removal**” for purposes of this Policy shall mean removing a respondent from the District’s education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Emergency Removals as permitted by this Policy shall not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

G. “**Formal Complaint of Sexual Harassment**” means a document filed by either (a) a complainant (or complainant’s parent/guardian); or (b) the Title IX Coordinator, alleging sexual harassment against a respondent AND requesting that the District investigate the allegation of sexual

harassment. The issuance or receipt of a Formal Complaint of Sexual Harassment formally triggers the Title IX Grievance Process set forth in Section IV. of this Policy.

H. “Investigation of Title IX Sexual Harassment” Before the District can conduct an Investigation of Sexual Harassment under this Policy, against a Respondent, a Formal Complaint of Sexual Harassment that contains an allegation of sexual harassment and a request that the District investigate the allegations is required. Such investigation is a part of the Title IX Grievance Process, as set forth in Section IV.E.

I. “Remedial actions” are actions intended to restore or preserve a complainant’s equal access to the educational programs and activities of the District.

J. “Report of Sexual Harassment” is any report which provides the District with actual knowledge of sexual harassment or allegations of sexual harassment. Such a report may or may not be accompanied by a Formal Complaint of Sexual Harassment. Without such a Complaint, the Title IX Grievance Process is not triggered. See Section IV.A and IV.B. regarding the process for initiating that process.

K. “Respondent” means an individual who has been reported to be the individual accused (i.e. perpetrator) of conduct that could constitute sexual harassment as defined under this policy.

L. “Retaliation” means intimidation, threats, coercion, or discrimination by either the District or any other person, against any individual for the purpose of interfering with any right or privilege secured by Title IX and/ or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in connection with this Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sexual discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this policy, constitutes retaliation.

Limitation in Scope.

i. Material False Statements. Actions taken in response to **materially** false statements made in bad faith, or to submitting **materially** false information in bad faith, as part of a report or during the Title IX Grievance Process do not constitute retaliation. A determination of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith.

ii. 1st Amendment Protections. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this Policy.

M. **“Sexual harassment”** prohibited under Title IX and by this Policy is conduct on the basis of sex, occurring in an education program or activity of the District, against a person in the United States, that satisfies one or more of the following:

1. A school district employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; **OR**

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the District's education program or activity; **OR**

3. Or any conduct which would satisfies one or more of the following definitions:

a. Sexual assault: Any sexual act(s) directed at another person without consent of the victim, including instances where the victim is unable to lawfully give consent because of age or cognitive ability. Consent to a sexual act exists where words, actions or other non-verbal conduct objectively communicates a desire to participate in the sexual act(s). Consent to some sexual act(s) does not indicate consent to all sexual acts. Consent may be withdrawn at any time by objectively communicating through words, actions or other non-verbal conduct **AND/OR**

b. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or an intimate nature with the victim. The existence of the relationship shall be considered with reference to the length of the relationship, the type of relationship and the frequency of the interactions between the persons involved in the relationship. **AND/OR**

c. Domestic violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim,

by a person with whom the victim shares a child, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner or any other persons protected under 15 V.S.A. section 1101 from domestic abuse. AND/OR

d. Stalking: A course of conduct by a person directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Limitation in Scope. For purposes of this policy conduct shall not be deemed to satisfy Title IX's definition of "sexual harassment" if the conduct occurred either (1) outside of the United States and/or (2) includes locations, events or circumstances over which the District did not exercise substantial control over both the respondent and the context in which the harassment occurred.

N. "Supportive Measures" are non-disciplinary, non-punitive, individualized services, offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. These measures may include, but are not limited to, the following:

- 1.counseling;
- 2.extensions of deadlines or other course-related adjustments;
- 3.modifications of work or class schedules;
- 4.campus escort services;
- 5.mutual restrictions on contact between the parties;
- 6.changes in work or housing locations;
- 7.leaves of absence;
- 8.increased security and monitoring of certain areas of the district campus;
- 9.and other similar measures.

III. Duties

A. Reports of Sexual Harassment

1. Any Person May Make a 'Report of Sexual Harassment'. Any person may report sexual harassment whether relating to her/himself or another person. A Report of Sexual Harassment may be made at any time, in

person, by mail, by telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

- a. Any Staff Member May Receive Reports. Additionally, while the District strongly encourages Reports of Sexual Harassment to be made directly to the Title IX Coordinator, the report may be made to any District staff member, including, for instance, a counselor, teacher or principal.
- b. In Cases where Title IX Coordinator is Alleged Respondent. If the Title IX Coordinator is the alleged respondent, in such cases either the Report of Sexual Harassment or Formal Complaint of Sexual Harassment may be made directly to the Superintendent, who shall thereafter fulfill the functions of the Title IX Coordinator regarding that Report/Complaint, or delegate the function to another person.

B. District Response to Report of Sexual Harassment.

1. Duty to respond. The District will promptly respond when there is Actual Knowledge of sexual harassment, even if a Formal Complaint of Sexual Harassment has not been filed.
 - a. District Response Must Be Equitable. In its response the District shall treat Complainants and Respondents equitably by providing supportive measures to the Complainant and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent.
 - b. Reports of Harassment Received by District Employees Shall Be Referred to Title IX Coordinator. Where any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this Policy, s/he shall, without delay, inform the Title IX Coordinator of the alleged sexual harassment. Failure to report will subject the employee to discipline up to and including dismissal.

- c. **Complainant Contact.** As soon as reasonably possible after receiving a Report of Sexual Harassment from another District employee or after receiving a report directly through any means, the Title IX Coordinator shall contact the Complainant [and parent/guardian in cases where the complainant is a student under the age of 18] to:
 - i. discuss the availability of and offer supportive measures;
 - ii. consider the complainant's wishes with respect to supportive measures;
 - iii. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - iv. explain to the complainant the process for filing a Formal Complaint of Sexual Harassment.

2. **Formal Investigation of Sexual Harassment.** Before the District may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a Respondent, a Formal Complaint that contains an allegation of sexual harassment and a request that the District investigate the allegations is required and must be filed by either the Complainant, the Complainant's Parent/Guardian, or the Title IX Coordinator, as set forth under Section IV.B. below.

3. **Initiating the Title IX Grievance Process.** A Report of Sexual Harassment alone does **not** initiate a Title IX Grievance Process. Before the District may initiate that process, a Formal Complaint of Sexual Harassment must be filed under the procedures set out in IV.A. ("Title IX Grievance Process").

C. Formal Complaints of Sexual Harassment.

1. **Process for Filing a Formal Complaint of Sexual Harassment.** The process for filing a Formal Complaint of Sexual Harassment is set forth in Section IV.A. ("Title IX Grievance Process").

a. District Response to Receipt of Formal Complaint.

i. **Investigation of Sexual Harassment.** The District must investigate the allegations of a Formal Complaint unless both parties voluntarily consent to engage in Informal Resolution, or Dismissal otherwise occurs under Section IV. G. below.

2. District Written Notification to Parties in Response to Receipt of Formal Complaint. Upon receipt of a Formal Complaint, the District must provide written notice as set forth in Section IV.C. below of the Title IX Grievance Process. In response to a Formal Complaint of Sexual Harassment, the District must follow the Title IX Grievance Process set forth in Section IV.

D. District Duty to Respond When Determination of Responsibility For Sexual Harassment Has Been Made Against a Respondent. The District must provide remedies to a Complainant where a determination of responsibility for sexual harassment has been made against a Respondent designed to restore or preserve equal access to the District's education program or activity. Such remedies may include "supportive measures" but also need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

E. Reporting to Other Agencies.

1. Reports to Department of Children and Families. When a report made pursuant to this policy includes allegations of child abuse, any person responsible for reporting suspected child abuse under 33 V.S.A. § 4491, et seq. must report the allegation to the Commission or 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.
2. Reports to Vermont Agency of Education. If a report of sexual harassment is made to the District about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the principal shall report the alleged conduct to the Superintendent and the Superintendent shall report the alleged conduct to the Secretary. [If a report of sexual harassment is made in an independent school about conduct by a licensed educator that might be grounds under Vermont law for licensing action, the head of school is encouraged to report the alleged conduct to the Secretary of Education.]
3. Reporting Incidents to Police.
 - a. FERPA Rights. Information obtained and documented by school administration regarding the school's response to notice of student conduct that may constitute sexual harassment 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.

b. First Hand Reports. Nothing in this policy shall preclude persons from reporting incidents and/or conduct witnessed first-hand that may be considered to be a criminal act to law enforcement officials.

4. Continuing Obligation to Investigate. Reports made to DCF, AOE or law enforcement shall not be considered to absolve the school administrators of their obligations under this policy, or other school policies where appropriate, to respond, and when appropriate to investigate and follow the Title IX Grievance Process.

F. Disseminating Information and Notice.

1. Notice of Title IX Policy. The District will make this Policy publicly available on the District’s website (OR if the District does not maintain a website, available upon request for inspection by members of the public).

2. Notice of Title IX Obligations and Coordinator Information. The District shall include in all student and employee handbooks, and shall make publicly available on the district’s website (OR if the District does not maintain a website, available for inspection to members of the public upon request) the following information:

a. The District’s policy of non-discrimination on the basis of sex, that it is required by Title IX not to discriminate in such a manner, and that such requirement not to discriminate in the education program or activity of the District extends to admission and employment (all to be prominently displayed on both the website and in publications):

b. The title, name, office address, email address, and telephone number of the District’s Title IX Coordinator (all to be prominently displayed on both the website and in publications);

c. A statement that Title IX inquiries may be referred to either the District's Title IX Coordinator or to the Assistant Secretary for Civil Rights.

The same information shall be otherwise provided to students, employees, unions or professional organizations holding collective bargaining or professional agreements with the District, and all persons seeking employment with the District, or seeking to enroll or participate in the District's educational programs or activities. Those persons shall also be informed of the grievance procedures and process provided for under Section IV. of this Policy, including how to file either a Report of Sexual Harassment or Formal Complaint of Harassment, and the response the District will take in response to such filings.

3. Training Materials. Additionally, the District will make any materials used to train personnel as required under Sec. V.F. publicly available on the District's website (OR if the District does not maintain a website, available upon request for inspection by members of the public).

G. Record Keeping

The District shall maintain for a period of seven years records of

1. Sexual Harassment Investigations. The District shall maintain records of any:
 - a. determination regarding responsibility;
 - b. any disciplinary sanctions imposed on the respondent;
 - c. any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity; and
 - d. any appeal and result therefrom.
2. Any informal resolution and the result therefrom.
3. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

4. **For each response required of the District by this Policy to Actual Knowledge of Sexual Harassment, the District must create and maintain for a period of seven years the following:**

- a. Records of any actions, including any supportive measures, taken in response to a Report of Sexual Harassment or Formal Complaint of Harassment. In each instance the District must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the District's educational program or activity. Where a District does not provide a Complainant with supportive measures, then the District must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the District in the future from providing additional explanations or detailing additional measures taken.

H. Confidentiality

1. **Duty to Maintain Confidentiality.**

The District must keep confidential the identity of any individual who has made a Report of Sexual Harassment or Formal Complaint of Sexual Harassment under this Policy, any Complainant, Respondent, and any witness, except either:

- a. As may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99;
- b. or as required by law, such as reports to DCF, law enforcement or the Agency of Education as set forth in Section III.E above;
- c. or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing or judicial proceeding arising thereunder, as set forth in this policy (Section IV.C.2, IV.E.7,8, and 10, IV.F.5., IV.G.3., and IV.H.7.);

- d. where maintaining confidentiality with respect to supportive measures offered to the Complainant or Respondent would impair the ability of the school district to provide the supportive measures;

IV. TITLE IX GRIEVANCE PROCESS.

A. General Provisions.

1. **Triggers for Implementation.** The Title IX Grievance Process is used only upon the filing of a **Formal Complaint** of sexual harassment as described below. This process must be followed before any discipline of a Respondent to allegations of Sexual Harassment may be imposed by the District.
2. **Protections for Equitable Treatment in The Handling of Formal Complaints by District.** The District response to a Formal Complaint of Sexual Harassment shall treat Complainant and Respondents equitably. In particular, this Title IX Grievance Process shall require:
 - a. **“Presumption of Non Responsibility”** presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process;
 - b. **“Objectivity”** an objective evaluation of all relevant evidence - including both inculpatory and exculpatory evidence - and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or Witness;
 - c. **“Conflict and Bias Free Personnel”** that individuals designated by the District to act as Title IX Coordinator, investigator, decision-makers, or to facilitate an informal resolution process, shall have no conflict of interest nor bias for or against a Complainant or Respondent individually, or complainants or respondents generally;
 - d. **“No Interference with Legal Privileges”** such that at no point in the grievance process will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District, require, allow, rely upon, or otherwise use questions or evidence that

constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process;

- e. **“Proof of Responsibility for Sexual Harassment by a Preponderance of the Evidence,”** which is only met when the party with the burden convinces the fact finder (the Initial Decision- Maker) that there is a greater than 50% chance that the claim is true (i.e., more likely than not). This standard shall be applied to all Formal Complaints of Sexual Harassment, whether they involve students or faculty; and
- f. **“Reasonably Prompt Time Frames for Conclusion of the Title IX Grievance Process.”** The District shall make a good faith effort to conduct a fair, impartial grievance process in a reasonably prompt manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded - through at least the determination of responsibility decision - within 80 days after filing the Formal Complaint of Sexual Harassment. However, more complex cases or other case specific circumstances, may require additional time beyond that timeframe. In such cases, good cause must be shown and written notice provided.

B. Grievance Process Timeline.

Investigation 20 +/- days (as the complexity of the case demands);

10 days for reviewing information prior to conclusion of investigation;

10 days after receiving investigative report -by either- party to respond;

10 days for decision maker to allow initial questions;

10 days for responses to questions;

10 days for questions and responses to follow-up questions;

10 days for determination of responsibility decision;

10 days for appeal (6 additional days for administrative steps);

10 days for argument/statement challenging or supporting determination;

10 days for decision on appeal.

1. Delays and Extensions of Time. At any stage of the grievance process, the District (through the Superintendent, or if the Superintendent is the respondent, the Title IX Coordinator or designee) may for good cause allow for temporary delays or extensions of time upon request of either party, or on his/her own initiative. Examples of good cause may include such things as availability of parties, party advisors, witnesses, school or school administrative office holidays or vacations, referral back to an earlier stage of the grievance process, concurrent law enforcement or other agency activity, or need to obtain language interpreters or accommodation of disabilities. For any such delay or extension of time, the Superintendent or the Title IX Coordinator will provide simultaneous written notice to the parties of the delay/extension and the reason(s).
2. Delivery of Copies and Notices. Except as specifically stated elsewhere in this Policy, for any document, information or material required to be delivered to a party or to a person assigned with responsibility under the Title IX Grievance Process, the manner of transmittal may be by electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof (such as a commercial carrier or other receipted delivery). Hand delivery will only be permitted if made to the District official charged with the specific function under this Policy (e.g., Title IX Coordinator, Superintendent, investigator, decision maker(s), etc.). Any document required to be delivered to a minor or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to a party's advisor if the information for the advisor has been previously communicated to the sending party. Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party's advisor.
3. Notice of Range of Disciplinary Sanctions and Remedial Actions Upon Final Determination of Responsibility.
 - a. Employee Respondents. "Disciplinary sanctions" against an employee respondent may include any available sanction available for the discipline of employees, up to and including dismissal or non-renewal for any other violation of Board policy,, applicable individual or

collective bargaining contract, or state or federal laws or regulations.

- b. Student Respondents. “Disciplinary sanctions” against a student may include any available discipline or sanction, up to and including expulsion, permitted by District policies, and any other District rules and procedures or student code of conduct.
- c. Remedial Actions. Remedial actions as to a Respondent after a Title IX Sexual Harassment Final Decision, whether employee or student, may include the imposition upon a responsible respondent of any additional non-disciplinary measures appropriate to effecting a remedy for sexual harassment, and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances surrounding a successful complainant’s right to access the district’s program and activity. Additional remedial actions may include recommendations that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances. In such cases, the Superintendent shall provide additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

5. Emergency Removal. Nothing in this Policy, or Title IX Grievance Process, precludes a District from removing a Respondent from the District’s education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the

Rehabilitation Act of 1973, or the Americans with Disabilities Act. Such removal shall not be disciplinary.

6. Administrative Leave. Nothing in this Policy precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of the Title IX Grievance Process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

C. Formal Complaints of Sexual Harassment. The Title IX Grievance Process is initiated by way of a Formal Complaint (“complaint” or “formal complaint”) filed by the Complainant, the Complainant’s parent/guardian, or the Title IX Coordinator.

1. Complainant Options. In cases of Actual Knowledge (and/OR) Reports of Sexual Harassment, the Complainant retains the option to either file a Complaint of Sexual Harassment or choose not to and instead simply receive the supportive measures, except as set forth below.

a. Filings by Title IX Coordinator. In cases where the Complainant does not file a Formal Complaint of Sexual Harassment, the Title IX Coordinator may nevertheless choose to sign and thus initiate a Formal Complaint of Harassment, but only if:

i. initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances;

ii. in other cases where, in the exercise of good judgment and in consultation with the District’s attorney as appropriate, the Title IX Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to Actual Knowledge of sexual harassment.

iii. If the Complaint is filed by the Title IX Coordinator, he/she is not a party to the action, and the District must comply with all of the provisions of the Title IX Grievance Process relative to respondents and complainants.

b. Supportive Measures. The Title IX Coordinator will contact the Complainant to discuss and offer supportive measures.

2. Respondent Rights. In cases where no Formal Complaint of Sexual Harassment is either filed by the Complainant or the Title IX Coordinator **no disciplinary action may be taken** against the Respondent based upon

conduct that would constitute sexual harassment under this policy. Nevertheless, the Title IX Coordinator may contact the respondent to discuss, and or impose, non-disciplinary supportive measures.

3. Timeliness of Formal Complaints of Sexual Harassment. Although the District will initiate the Title IX Grievance Process regardless of when the Formal Complaint of Sexual Harassment is submitted, delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

4. Jurisdiction Over Parties. Although there is no time limit per se to filing a Formal Complaint of Sexual Harassment, Complaints may be dismissed if either the Complainant or Respondent is no longer enrolled or employed by the District.

5. Manner of Filing and Content of Formal Complaints of Sexual Harassment. Formal Complaints of Sexual Harassment may be filed with the Title IX coordinator in person, by mail, or by email and must be in writing. While forms may be obtained from the Title IX Coordinator or on the District or school website, at a minimum, a Formal Complaint of Sexual Harassment must:

- a. contain the name and address of the Complainant and the student's parent or guardian if the complainant is a minor student;
- b. describe the alleged sexual harassment;
- c. request an investigation of the matter;
- d. when filed by the Complainant be signed by the Complainant or otherwise indicate that the complainant is the person filing the complaint, or if not filed by the Complainant be signed by the Title IX Coordinator.

6. Consolidation of Complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party. When the District has consolidated formal complaints so that the grievance process involves more than one complainant or more than one respondent, references to the singular "party", "complainant", or

“respondent” include the plural, as applicable.

C. Notification of Formal Complaint to Parties (“Notification”). Upon receipt of a Formal Complaint of Sexual Harassment, the District must provide the following written notice to the parties who are known:

1. Notice of the District’s Title IX Grievance Process (Section IV), including any informal resolution process.

2. Notice of the allegations potentially constituting sexual harassment as defined by Section II.M., including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined by Section II.M., and the date and location of the alleged conduct, if known.

a. Supplemental Notice Required Upon Change in Investigative Scope. If, in the course of an investigation the District decides to investigate allegations about the Complainant or Respondent that are not included in the original Notification, the District must provide simultaneous notice of the additional allegations to the parties whose identities are known.

3. The written notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process set forth in Section IV. of the Policy.

4. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney (who may be present during any Grievance proceeding, including any related meeting or proceeding). The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

5. The written notice must inform the parties of any provision in the District’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

D. Informal Resolution. At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint),

the District may offer an optional informal resolution process (e.g., mediation, arbitration), provided that the District:

1. May not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a Sexual Harassment Investigation of a Formal Complaint of Sexual Harassment, such as may occur through Informal Resolution;
2. May not offer an informal resolution process unless a Formal Complaint of Sexual Harassment is filed;
3. Provides written notice to the parties disclosing:
 - a) The allegations of the Formal Complaint of Sexual Harassment;
 - b) The requirements of the information resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - c) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
4. Obtains the parties' voluntary written consent to the informal resolution process; and
5. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

E. Sexual Harassment Investigation.

The Title IX Coordinator shall designate a qualified, trained, person to investigate. The investigation must:

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. (Evidence about the complainant's

sexual predisposition or prior sexual behavior are **not** relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.)

2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not on either of the parties;
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
5. Provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
6. Provide, to a party (e.g., Respondent or Complainant – and parent/guardian as appropriate) whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation;
8. PRIOR to completion of the Sexual Harassment Investigative Report, the District, through the Title IX Coordinator, must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days

to submit a written response, which the investigator will consider prior to completion of the investigative report;

9. Prepare a written Sexual Harassment Investigative Report that fairly summarizes relevant evidence, including, without limitation, witness credibility, discrepancies, inculpatory and exculpatory information, and relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties. The investigative report shall include a description of the procedural steps taken, starting with the receipt of the formal complaint, and continuing through the preparation of the investigative report, including any notifications to the parties, interview with parties and witnesses, site visit, and methods used to gather evidence.

10. The investigator shall provide the Investigative Report in hard copy or electronic format to the Title IX Coordinator, to each party and each party's advisor, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the Investigative Report.

F. **Initial Determination of Responsibility.** The initial determination of responsibility of the respondent shall be made by the Initial Decision-Maker.

1. **Initial Decision-Maker.** The Initial Decision-Maker cannot be the same person(s) as the IX Coordinator or the Investigator(s).

2. **Opportunity for Relevant Party Questions.** After the Investigator Report has been sent to the parties pursuant to Section IV. E.10 (above), and PRIOR to making a determination of responsibility, the Initial Decision-Maker will afford each party 10 days to submit written, relevant questions to the Initial Decision-Maker that the party wants asked of any party or witness. Only relevant questions may be posed. The Initial Decision-Maker shall explain to the party proposing the questions any decision to exclude a question as deemed "not relevant."

a. **Irrelevant Questions and Evidence.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are **not** relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if the

question and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

b. Written Responses to Questions. The Initial Decision-Maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days for written responses, likewise to be provided to each party.

c. Opportunity for Limited Supplemental Questions. The Initial Decision-Maker will provide 5 days each for supplementary, limited follow-up questions and 5 days for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.

3. Prohibition on Negative Inferences. The Initial Decision-Maker may not make any credibility determinations based on the person's status as a complainant, respondent or witness.

4. Presumption of Non-Responsibility. The Respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process.

5. Written Initial Determination Regarding Responsibility. Within 10 days following the close of the period set for responses to the last round of follow-up questions, the Initial Decision-Maker must issue a Written Initial Determination to the Title IX Coordinator, the Superintendent and the parties simultaneously, which, while applying the preponderance of the evidence standard, must include:

a. Identification of the allegations potentially constituting Sexual Harassment as defined in this Policy, section II.M.;

b. A description of the procedural steps taken from the receipt of the formal complaint through the Initial Determination Regarding Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;

c. Findings of fact supporting the Written Initial Determination Regarding Responsibility;

- d. Conclusions regarding the application of the District's applicable codes of conduct, policies, administrative regulations or rules to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether or not the respondent is responsible for sexual harassment), any disciplinary sanctions the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the Complainant; and
- f. The District's procedures and permissible bases for the Complainant and Respondent to appeal (as set forth in Section IV.H, below).

6. Finality of Decision. The Initial Determination Regarding Responsibility becomes final, and identified as the **Title IX Sexual Harassment Final Decision** either:

- a. On the date that District provides the parties with Written Determination of the Appeal, if an appeal is taken as set forth in Section IV.H. (below); OR
- b. Where no appeal is taken, the date on which an appeal would no longer be considered timely.

7. Duty to Effectuate Title IX Sexual Harassment Final Decision.

- a. District Response to Sexual Harassment. Once a **Title IX Sexual Harassment Final Decision** is issued, the District may implement remedies as set forth in Section III.D. above, and action as necessary to respond in a manner not deliberately indifferent in light of the known circumstances in cases of a Determination of Title IX Sexual Harassment Final Decision concluding responsibility for Sexual Harassment. The issue of responsibility for the conduct at issue shall not be subject to further review or appeal within the District (except as provided by District policy or collective bargaining agreement or applicable law). Appeals of disciplinary sanctions may be made pursuant to the District's ordinary review process for discipline, or to the extent applicable through any statutory or other processes provided under collective bargaining agreements or individual contracts.

- b. Responsibility for Response. The Title IX Coordinator is responsible for effective implementation of remedies.
- c. Other Actions Pursuant to Applicable Code of Conduct, Policies, Agreements, Contracts. The District may also proceed against the Respondent or Complainant pursuant to the District's applicable code of conduct or other Board policies, collective bargaining agreement, individual contract or administrative rules/regulations/procedures.

G. Dismissal of a Formal Complaint.

1. The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:
 - a. Would not constitute sexual harassment, even if proved;
 - b. Did not occur in the District's education program or activity; or
 - c. Did not occur against a person in the United States.
2. The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):
 - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - b. The respondent is no longer enrolled or employed by the District; or
 - c. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. Upon dismissal of a formal complaint, the District must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.
4. The dismissal of a formal complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In

some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process.

H. Appeals. The District must offer both parties an appeal from a Initial Determination Regarding Responsibility, and from a Dismissal of a Formal Complaint, or any allegations therein.

1. Method of Filing. Either party may appeal the Initial Determination of Responsibility or the dismissal of a Formal Complaint of Sexual Harassment (or any allegations therein) by notifying the Superintendent in writing (“written appeal”), with a copy to the Title IX Coordinator. If there are multiple determinations of responsibility, the written appeal shall specify which ones are included in the appeal.

2. Deadline for Notice of Appeal. The Notice of Appeal must be in writing and received by the Superintendent, with a copy to the Title IX Coordinator, within 10 days of either the Initial Determination of Responsibility or the written Notice of Dismissal being communicated to the parties, as appropriate.

3. Grounds For Appeal. Either party may only appeal the Initial Determination of Responsibility or the Dismissal of a Formal Complaint of Sexual Harassment (or any allegations therein) based upon one or more of the following grounds, which must be stated specifically in the party’s written appeal:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

4. Appellate Decision-Maker. The Appellate Decision-Maker shall not be the same person as the Initial Decision-Maker that reached the determination regarding responsibility or the Dismissal of a Formal Complaint of Sexual Harassment, the Investigator(s) or the Title IX Coordinator. The Appellate Decision-Maker shall not have a conflict of interest or bias for or against complainants or respondents generally or an

individual complainant or respondent. The Appellate Decision-Maker shall be trained as set forth in section V.F.2. and 3.

5. District Notification of Appeal and Duty to Equitable Treatment of Parties During Appeal. The District must notify the both parties in writing when an appeal is filed and implement appeal procedures equally for both parties.

6. Opportunity to Brief Appellate Decision-Maker.

a. Deadline In Cases Other than Newly Available Evidence. Except in cases of newly available evidence, each party shall have 10 days “reasonable and equal opportunity] from the date of the Notification of Appeal under section H.5. above, to submit to the Appellate Decision-Maker a written statement in support of, or challenging, the Initial Determination Regarding Responsibility.

b. Deadline in Cases of Newly Available Evidence. In cases where the basis of the appeal is newly available evidence affecting the outcome, the party relying upon such evidence shall submit to the Appellate Decision-Maker such evidence or a summary of such evidence along with the party’s appeal statement first and within 7 days from the date of the Notification of the Appeal. In such instances the Appellate Decision-Maker shall then forward such documentation on to the opposing party, whereupon the opposing party shall thereafter have 7 days to review and submit their Brief to the Appellate Decision-Maker.

7. Written Determination of the Appeal

a. The Appellate Decision-Maker shall provide a Written Determination of the Appeal after considering the record and the parties’ appeal statements, describing the result of the appeal and the rationale of the result. The appeals decision maker will only overturn the Initial Determination of Responsibility upon a conclusion that it was clearly erroneous (i.e., either made on unreasonable grounds, or without any proper consideration of the circumstances). If the basis or one of the bases for the appeal was new evidence, the appeals decision maker may either make a determination of responsibility regarding that evidence or refer it back to the appropriate stage of the Title IX Grievance Process. The Appellate Decision shall be

provided simultaneously to both parties, with a copy to the Title IX Coordinator and the Superintendent of Schools.

- b. Upon issuance of the Written Determination of the Appeal, it becomes a **Title IX Sexual Harassment Final Decision**, as set forth in Section IV.F.6, with commensurate Title IX obligations for the District to act as set forth in Section IV.F.7.

V. **Responsible Personnel.**

A. **Bias or Conflicts of Interest.**

No person designated as a Title IX Coordinator, investigator, decision-maker, nor any person designated by the District to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

B. **Title IX Coordinator.**

The District must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this Policy, which employee must be referred to as the "Title IX Coordinator." Any individual designated by the District as a Title IX Coordinator shall be free of conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

1. **Notice of Title IX Coordinator Contact Information.** The name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the Title IX Coordinator shall be provided to the following:

- a. all applicants for admission and employment;
- b. parents or legal guardians of elementary and secondary school students;
- c. employees; and
- d. all unions or professional organizations holding collective bargaining or professional agreements with the recipient.

2. Duties of Title IX Coordinator In addition to coordinating the District's efforts to comply with its responsibilities under this Policy, and any other duties assigned, the Title IX Coordinator shall be responsible for:

a. Receipt of Reports of Sexual Harassment. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

i. Responding to general reports and formal complaints of sexual harassment.

(a). The Title IX Coordinator shall promptly contact the Complainant (or where Complainant is a minor their parent/guardian) (regardless to whether a formal complaint has been received) to discuss:

i. Supportive Measures: the availability of supportive measures (as defined in section II.N. above); to consider Complainant's wishes with respect to supportive measures; to inform of the availability of supportive measures with or without the filing of a Formal Complaint of Sexual Harassment;

ii. Formal Complaint and explain the process for filing a Formal Complaint of Sexual Harassment.

ii. Signing and/or receiving Formal Complaints of Sexual Harassment and in such cases commencing the Title IX Grievance Process set out in Section IV. above;

iii. Coordinating the effective implementation of supportive measures; and

iv. Coordinating the District's efforts to comply with its responsibilities related to the Title IX Grievance Process set forth in Section IV of this policy, including any other specific duties as assigned by the Superintendent to fulfill the District's obligations under this policy.

3. Conflict of Interest or Bias/Unavailability. In cases where the Title IX Coordinator is unavailable, including unavailability due to a conflict of interest or other disqualifying reason, the Superintendent shall assure that another person with the appropriate training and qualifications is appointed as acting Title IX Coordinator for that case, in such instances “Title IX Coordinator” shall include the acting Title IX Coordinators.

C. Investigators.

1. Conflict of Interest or Bias. Any individual assigned to investigate a Formal Complaint of Sexual Harassment shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2. Responsibilities. Investigators shall be responsible for conducting Sexual Harassment Investigations as set forth in Section IV.E. above.

D. Decision-Makers.

1. Conflict of Interest or Bias. Any individual assigned as a Decision-Maker in the case of a Sexual Harassment under this Policy shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2. Responsibilities.

a. **Initial Decision-Makers** shall be responsible for issuing an Initial Determination Regarding Responsibility following a Sexual Harassment Investigation and other duties set forth in Section IV.F. above.

b. **Appellate Decision-Makers** shall be responsible for issuing a Written Determination of the Appeal, and other duties set forth in Section IV.H. above.

E. Informal Resolution Process Facilitators (“Facilitators”).

1. Conflict of Interest or Bias. Any individual assigned to facilitate an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2. Responsibilities. Facilitators shall be responsible for facilitating a

process of informal resolution as permitted in section IV. D. above.

F. Training. The District shall ensure that training of the following personnel occur:

1. All District Employees. Training of District Employees shall occur relative to mandatory reporting obligations, and any other responsibilities they may have relative to this Policy.

2. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These individuals must be trained on the following topics:

- a. the definition of sexual harassment as contained within this Policy;
- b. the scope of the recipient's education program or activity;
- c. how to conduct an investigation, appeals, and informal resolution process;
- d. how to serve impartially, including by avoiding prejudgment of the facts at issue; and
- e. conflicts of interest and bias.

3. Decision-makers. In addition to the topics set forth in II.D.2. above, decision-makers shall be trained on the following topics:

- a. issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant as set forth in Section IV.E.1. and IV.F.2.a.

4. Investigators. In addition to the topics set forth in II.D.2. above, investigators shall be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in Section IV.E.9 above.

5. Training Materials. Any materials used for trainings of Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must:

- a. Not rely on sex stereotypes; and

b. Promote impartial investigations and adjudications of formal complaints of sexual harassment.

c. Be made available to the public either on its website, or if the District does not maintain a website, must make those materials available upon request for inspection by members of the public.

<i>VSBA Update:</i>	<i>September 1, 2020</i>
<i>Date Warned:</i>	<i>10/12/20</i>
<i>Date Adopted:</i>	<i>11/9/20</i>
<i>Legal Reference:</i>	<i>Title IX of the Education Amendments of 1972, 20 U.S.C 1681, et seq 20 U.S.C. 1681-1688, Educational Rights and Privacy Act</i>
	<i>34 CFR. Part 99, Family Educational Rights and Privacy Act Regulations</i>
	<i>34 CFR 106.8, Designation of responsible employee and adoption of grievance procedure</i>
	<i>34 CFR 106.30, Definitions</i>
	<i>34 CFR 106.44, Recipient's response to sexual harassment</i>
	<i>34 CFR 106.4, Grievance process for formal complaints of sexual harassment</i>
	<i>34 CFR 106.71, Retaliation</i>
<i>Cross Reference:</i>	

EXHIBIT 4

From: [REDACTED]
Date: September 27, 2022 at 2:30:12 PM EDT
To: [REDACTED]
Subject: Important: Access to girls locker room
Reply-To: [REDACTED]

To: RU Volleyball families

From:

Lisa Floyd, Co-Principal

Caty Sutton, Co-Principal

Nick Bent, Athletics & Activities Director

RE: Girls Locker Room

September 27, 2022

Dear RU Volleyball Families,

We are continuing to work through investigating allegations related to behavior that allegedly occurred in the locker room at RUHS prior to a game, as well as alleged fallout from that behavior. Therefore, we are closing the locker room to all volleyball players until further notice. We do not make this decision lightly, but we believe it is the right decision at this time. Volleyball players should expect to either come to school dressed for their game or practice, or expect to change in either the single stall restrooms or in a stall in a multi-stall restroom. Members of the team should remember that the expectation is that single stall facilities must be accessed by a single occupant at a time.

This decision should not be interpreted as a judgment on the facts of any one side of this situation; this decision has been made to ensure that we are providing the safest possible environment for all involved.

If you are interested in discussing this matter further, please reach out to a member of our administration team.

Sincerely,

Lisa Floyd, RU Co-Principal

EXHIBIT 5

3 Weather Alerts In Effect



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Randolph High School investigating gender locker room dispute



By Kiana Burks

Published: Sep. 28, 2022 at 6:18 PM EDT | Updated: 8 hours ago



RANDOLPH, Vt. (WCAX) - Randolph High Schools girl's volleyball team has been banned from its own locker room while school officials investigate a conflict involving a transgender student on the team.

Vermont education policy says students can play sports and use the locker room corresponding to their gender. But some members of the Randolph girl's volleyball team objected to having a transgender teammate in the room while they were changing.

"It's a huge thing. Everyone's asking, 'So, why aren't you allowed in the locker room?'" said Blake Allen, who along with her fellow teammates are currently barred from using the locker room after some of the girls on the team objected to allowing a transgender player in the girl's locker room.

"My mom wants me to do this interview to try to make a change," Allen said. "I feel like for stating my opinion -- that I don't want a biological man changing with me -- that I should not have harassment charges or bullying charges. They should all be dropped." Allen says that the dispute started when the trans student made an inappropriate comment while members of the volleyball team were getting

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changed. She says her issue is not with having the trans student on the team or at school, but specifically in the locker room. "There are biological boys that go into the girl's bathroom but never a locker room," Allen said.

She says that fellow team members and parents have also raised similar concerns and have approached the school with them. They were told that under state law, the transgender student could use whatever locker room they identified with.

In an email to families, school officials wrote that the school has "plenty of space where students who feel uncomfortable with the laws may change in privacy."

"They want all the girls who feel uncomfortable -- so pretty much 10 girls -- to get changed in a single stall bathroom, which would take over 30 minutes. Where if one person got changed separately, it would take a minute, like no extra time," Allen said.

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In the email to parents, school officials say they are conducting an investigation into allegations the girls harassed the transgender student.

Randolph Co-Principal Lisa Floyd said in an email that student safety was the district's top priority and that when policies are violated, disciplinary action consistent with the law will be taken.

Vermont Agency of Education officials were not available for comment Wednesday. AOE policy states, in part, that "The use of restrooms and locker rooms by transgender students requires schools to consider numerous factors..." But it goes on to state that "A transgender student should not be required to use a locker room or restroom that conflicts with the student's gender identity."

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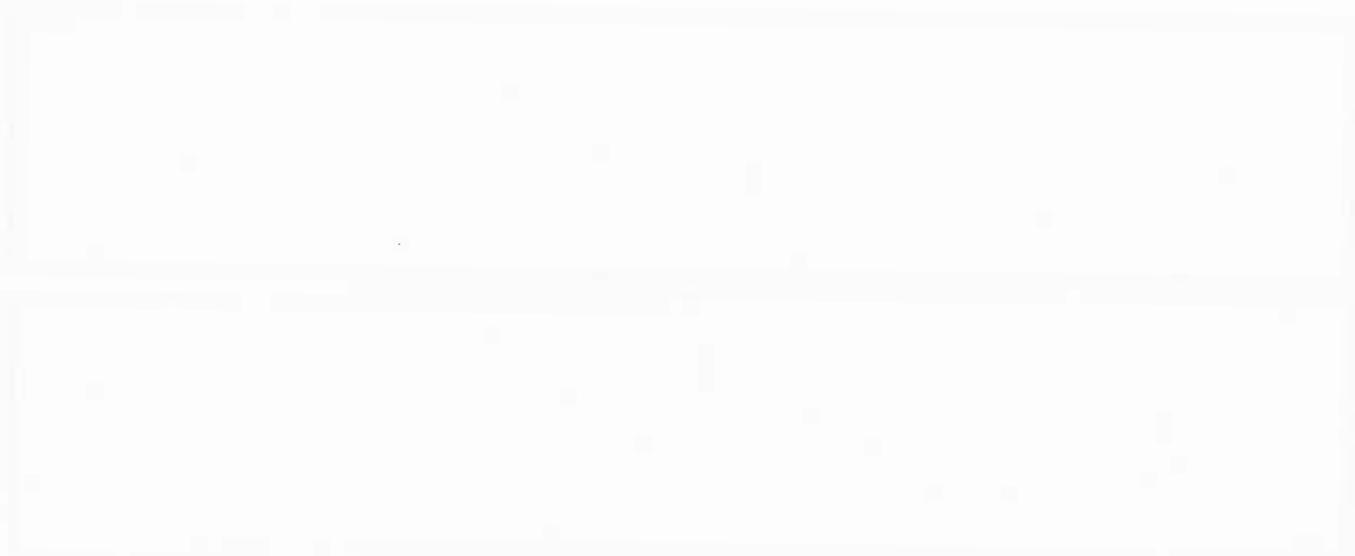


EXHIBIT 6

From: Layne Millington [REDACTED]
Date: September 30, 2022 at 10:36:24 AM EDT
To: Jessica Allen [REDACTED]
Subject: Threat Assessment Protocol

Hi Jessica,

Caty and Lisa forwarded me your request to have a copy of our threat assessment protocol. This is not typically something we share publicly, nor is it something we are required to share under the public records act as it would compromise our security. It is the same reason we do not publicly share the details of our lockdown and evacuation procedures - if they fall into the hand of someone intending to perpetrate violence, they can find a way to bypass those protocols.

If it provides some assurance, the protocols were last reviewed and updated on 12/15/21 using recommendations and research from the FBI.

Most Sincerely,

Layne

--

*Layne Millington, Superintendent
Orange Southwest Supervisory District
802-728-5052*

[REDACTED]

EXHIBIT 7

7:55



WCAX-TV

23m ·

people who are responsible are held accountable whether it be the girls or trans individual.

2h Like Reply

am the mother of the trans student in question and my daughter did not make any comments at all. The entire team can back this up, other than the girl that made up the story for attention. This is slander, defamation of character, and we have secured a lawyer. My daughter has no interest in anything other than being accepted for who she is and playing volleyball. What inappropriate comments would she have made, I'm curious? This is outrageous. The ACLU has been enlisted. There will be a thorough investigation and truth will prevail.

37m Like Reply

Write a reply...

It's insane to think that after the MALE made an inappropriate comment while in

Write a comment...

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- Watch
- Tabs
- Feeds
- Notifications
- Menu

EXHIBIT 8

10:05



Comment

worked for a school and the students can be very cruel. If you read my comments, you can see that I want justice for whoever was wronged. I am not putting blame on anyone. I did say that I was curious about how it was going to turn out because it's not ok for either of the situations.

2h Like Reply



Jessica Allen

[REDACTED] would be GLAD to have a conversation with you regarding this matter!

2h Like Reply



Travis Allen

[REDACTED] I am the father of the girl you claim "made up a story for attention" the truth is your son watched my daughter and multiple other girls change in the locker room. While he got a free show they got violated.

you think this is fine and dandy, I wonder how you would feel if I watched you undress?

Just now Love Reply



Write a reply...



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EXHIBIT 9



RANDOLPH BRAintree BROOKFIELD

RANDOLPH UNION HIGH SCHOOL

25 Forest Street
Randolph Vermont 05460
802-728-3387

Randolph Union Middle & High School Ethics Agreement for Coaches

The responsibility of a coach is to teach attitudes, proper habits, knowledge and skills. The athletic program is designed to enhance academic achievement and should never interfere with opportunities for academic success. Each student athlete should be treated as an individual whose welfare shall be primary at all times. The coach must be aware that he or she serves as a model in the education of the student athlete and, therefore, shall never place the value of winning above the value of character building.

Core Coaching Beliefs

1. The coach must constantly uphold the honor and dignity of education professions. In all personal contact with the student athletes, families, officials, athletic directors, school administrators, the state high school athletic association, the media and the public, the coach shall strive to set an example of the highest ethical and moral conduct.
2. The coach shall support and enforce school rules including rules for the prevention of drug, alcohol and tobacco use and abuse, and under no circumstances shall authorize the use of these substances.
3. The coach shall support the school's policies related to hazing, harassment, and bullying. They should exhibit an attitude of Zero Indifference in the face of such behavior, and respond to the student athletes, and report to the school administration when behavior that deteriorates the team dynamic occurs.
4. The coach shall promote the entire interscholastic program of the school and direct his or her program in harmony with the total school program.
5. The coach shall be thoroughly acquainted with contest, state, league and local rules, and is responsible for their interpretation to team members. The coach shall abide by the letter and spirit of these rules at all times.
6. Coaches shall actively use their influence to enhance sportsmanship by their spectators, working closely with cheerleaders, booster clubs, and administrators.

7. Contest officials shall have the respect and support of the coach. The coach shall not indulge in conduct that incites players or spectators against the officials or against each other. Public criticism of officials or players is unethical.
8. Before and after contests, rival coaches should meet and exchange friendly greetings to set the correct tone for the event.
9. A coach shall not exert pressure on faculty members to give student athletes special consideration.
10. It is unethical for coaches to scout opponents by any other means than those adopted by the state high school athletic association and the league.

I, _____, agree to uphold these ethics throughout my coaching career at Randolph Union Middle/High School.

Signature

Date



Proud Member of the League of Innovative Schools

EXHIBIT 10

ORANGE SOUTHWEST SCHOOL DISTRICT

Layne W. Millington
Superintendent

Heather Lawler
Assistant
Superintendent



Twenty-Four Central Street
Randolph, VT 05060
TEL (802) 728-5052
FAX (802) 728-4844

Robin Pembroke
Business Manager

Kayla Link
Director of Special
Education

Travis Allen



October 18, 2022

RE: Investigation Findings and Resolution

Today's meeting with you was a follow up on an investigation that RUHS had to conduct due to student and parent complaints about public postings and comments you made misgendered a transgender student in our district. Behavior that you admitted you did on purpose when you spoke on your behalf during the investigation.

Such conduct is unprofessional and unbecoming and flies in the face of the Vermont Principal's Association's athletic regulations, Vermont State regulations, and the RUHS Middle-High School expectations. While you have a right to your own opinions, you have chosen to publicly put yourself in opposition to the principles the district and its coaches are compelled to uphold. We therefore have significant concerns about your ability to support all of our students as the law requires. Since this is a matter of public trust, any coach we put on the field must uphold these laws and regulations.

The district offered to work with you to make these matters right, the two possible solutions you offered were insufficient to re-establish the public trust you have damaged: avoiding using gender pronouns when communicating with transgender students and taking down the posts. The district recommended a public apology which you refused leaving the matter unresolved. Therefore, you have been suspended without pay for the remainder of the season. You were also offered the opportunity to change your mind at any time during the suspension in order to make things right and to earn back the public's trust in your ability to support all students in your role as a RUHS coach.

Sincerely,

A handwritten signature in black ink that reads 'Layne W. Millington'.

Layne W. Millington
OSSD Superintendent

EXHIBIT 11

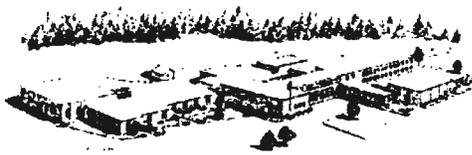
From: rucoprincipals rucoprincipals [REDACTED]

Sent: Friday, October 21, 2022 6:45 PM

To: Allen, Travis R. [REDACTED]

Subject: HHB Conclusion

This message is from an external sender. Please be careful when clicking on links and attachments.



RANDOLPH BRAINTREE BROOKFIELD

RANDOLPH UNION HIGH SCHOOL

15 Forest Street
Randolph, Vermont 05060
802-728-3397

October 21, 2022
VIA EMAIL ONLY

To: Blake, Jessica & Travis Allen
From: Lisa Floyd & Caty Sutton, RU Co-Principals
Re: HHB Investigation

Dear Blake, Jessica, and Travis Allen,

On September 23, 2021, we informed you via written notification that we had initiated an investigation under our Policy for the Prevention of Harassment, Hazing and Bullying and our related procedures.

I write today to report the investigation was completed on October 14, 2022 with a finding of substantiation of a violation of the school's aforementioned policy, with respect to harassment on the basis of gender identity, and additionally on the basis of bullying. The preponderance of the evidence demonstrated that Blake engaged in verbal and physical conduct directed at a student on the basis of the targeted student's gender identity during team events, practices, on the field, and in the locker room. Blake's conduct was additionally found to have caused impacts upon both the targeted student and that student's educational environment that are expressly prohibited by the harassment policy. Separately, Blake's conduct was deemed to have been done with intent to ridicule, humiliate and/or intimidate the targeted student, and, having engaged in such conduct on a repeated basis in school and/or during school sponsored activities, thus constituted a violation of our bullying policy.

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 recurrence of the offending conduct. Accordingly it has been determined that Blake will either:

1. Take part in a restorative circle with Jamie Connor (our Equity Coordinator) and at least 2 students who can help her understand both the rights of students to access public accommodations such as schools in a manner consistent with their gender identity and the impact of her behavior. As part of this work, Blake will submit a reflective essay documenting her experience and the learning that she has gained.
2. Blake shall serve out of school suspension. She will serve at least 2 days, and should Blake refuse to engage in the remedies outlined in 1 immediately above, or should Blake's engagement in those remedies be deemed as lacking good faith by Jamie Connor - an additional 3 days. During any such suspension, she will be prevented from after school activities on the days served.

We ask that you and your daughter attend a meeting with us, to be arranged at our mutual convenience, to review the HHB POLICY definitions of bullying and harassment and to address RUHS' future expectations for Blake, and the potential for additional consequences should these behaviors continue.

Please be advised that any student such as Blake, who is determined to be in 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, unless mutually agreed. Please note while certain discipline recommendations may be considered "stayed" pending the Board's hearing, **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 Appeal process.

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.

Sincerely,

Lisa Floyd & Caty Sutton
RU Co-Principals

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Travis Allen, Jessica Allen, as her next friend and mother of minor Blake Allen

(b) County of Residence of First Listed Plaintiff Orange County, VT (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Anthony Duprey, Duprey Law, PLLC (802)-870-6563 11 Main Street, Ste B110F, Vergennes, VT 05491

DEFENDANTS

Layne Millington, Lisa Floyd, Caty Sutton, Orange Southwest School District Board

County of Residence of First Listed Defendant Orange County, VT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Pietro J. Lynn, Lynn, Lynn, Blackman & Manitsky, P.C. 76 St. Paul Street, Burlington, VT 05401 (802) 860-1500

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, PTF DEF, PTF DEF, PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, 710 Fair Labor Standards Act, 820 Copyrights, 870 Taxes, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION. Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983. Brief description of cause: Defendants' termination and suspension of plaintiffs violates Plaintiffs' First Amendment rights of free speech.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 10/27/2022 SIGNATURE OF ATTORNEY OF RECORD Anthony R. L. Duprey

RECEIPT # 4682026743 AMOUNT \$402.00 APPLYING IFP Sum Issued JUDGE 1012 MAG. JUDGE 2:22-cv-197