

Exhibit A

Model Procedures on the Prevention of Harassment, Hazing and Bullying of Students

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:
- i. Promptly reduce any oral information to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant.
 - ii. 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:
- i. 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 follow-up 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. 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.
 - 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.

Legal References:

Title V, Section B, 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.;
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d;
Title IX of the Educational Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq.;
Family Education Rights Privacy Act; 20 U.S.C. §1232g;
Public Accommodations 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).

Exhibit B

**Combined Incident
Reporting Software (CIRS)
School Year 2015-2016
Reporting Instructions**

DUE

July 1, 2016

**General Supervision and Monitoring
(802) 479-1165**



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What's New

This year we will be adding to additional questions to the Action section associated with each student involved in a behavioral incident. The questions ask if seclusion or restraint were used in the incident, please pay attention to the AOE definition of what seclusion and restraint are on page 6 under the Disciplinary Actions sections of the definitions.

Reportable Incidents - Types of incidents which must be reported

- All suspensions and expulsions for violations of school substance abuse policies.
- All hazing, harassment and bullying complaints.
- All suspensions and expulsions of students.
- All violent crimes that occurred on school grounds or at a school sponsored function.
- All incidents where the victim of a violent crime that occurred on school grounds exercised their school choice option under NCLBA.
- All incidents involving a weapon on school grounds or at a school-sponsored function.
- All incidents of unilateral removal to an alternative setting.

Things to Remember

Technical Centers must report incidents through their associated high school.

We have clarified the definition of Expulsion to state that the student is barred from school grounds for the remainder of the school year or longer. This is necessary to match the US Department of Education definition.

There is no longer a requirement for the Safe and Healthy Schools Program collection.

Data Collection and Program Descriptions

This data collection is a collaborative effort among the Department of Education, the Department of Health, Office of Alcohol and Drug Abuse Programs, and the Department of Mental Health.

The information will be used to:

- Assess individual school compliance with NCLBA, Act 120 (Hazing, Harassment and Bullying), IDEA and 16 V.S.A. §165 (a), (8) (Safe Schools School Quality Standard).
- Prepare for SDFSCA onsite evaluation visits.
- Most importantly, this data should provide you with valuable information regarding your school climate.

Due Date

The data is due July 1, 2016. Non-compliance can result in withheld funds.

Data Collection and Program Description

The Combined Incident Reporting Software is designed to assist in the gathering of information related to violations of school policies, state or federal statutes or regulations (what we are referring to as “incident data”. See Reportable Incidents.) The state and federal requirements to gather this data are outlined below.

This software has been revised for use based on legislative changes and your feedback throughout the year. The software is designed to be used on a day-to-day basis. At the end of the school year please upload the incident data using our Secure FTP server. If you require assistance with this, please call the IT Help Desk at (802) 479-1044. You can also copy the data onto a CD and send it to the Agency of Education at DMAT, Vermont Agency of Education, 219 North Main Street, Suite 402, Barre, VT 05641. We believe that this application will provide you with an easy to use, yet very effective method of gathering and storing your incident data in the format necessary to meet the Agency’s reporting requirements and your school’s data needs.

This software includes several management reports intended to be used by school administrators to track the frequency of incidents, location, time of day.

Questions about the content of Combined Incident Reporting Software should be addressed to the appropriate program manager as follows:

All behavior related questions: Tracy Harris (809) 479-1421

IDEA (IEP) related questions: Mike Bailey (802) 479-1165

Assistance with the application: IT Help Desk (802) 479-1044

Combined Incident Reporting Software

All public schools **are required** to respond to this portion of the data collection. For all other Vermont schools, use of the software is optional.

Hazing, Harassment and Bullying Data

16 V.S.A. §164 (17) requires the Secretary to report annually, on a school-by-school basis, the "number and types of complaints of harassment or hazing made pursuant to section 565 of this title and responses to the complaints." It is important to note that schools should report all complaints filed, not just those where there has been a finding of harassment or hazing. Act 117 of 2004 added “bullying” to the list of reportable incidents.

Data Collection Tip:

Since several different individuals may possess data required for this report, we suggest schools consider identifying a team to gather the information rather than appointing an individual. The software can produce a hard copy of each section of the data collection that can be used by team members to gather the necessary information for input by a data clerk.

Data Collection Tip: Enter all bullying incidents, even if the bullying has not been repeated. To re-classify an incident previously entered as a “general” incident, print out the incident report, delete it from general incidents and re-enter it as a bullying incident.

Suspension and Expulsion Data

The federal SDFSCA requires the Agency to annually collect the number of students who are suspended or expelled for possession of, or selling alcohol, tobacco or other drugs. The federal Individuals with Disabilities Education Act (IDEA) requires the Agency to gather suspension and expulsion data for students eligible for special education services.

Suspension or Expulsion Data for all Students

The federal Office of Special Education Programs requires the agency to collect this statewide data as part of its state monitoring activities. Annually, this data will be reported to the public at the SU level.

Persistently Dangerous Schools Data

Under the provisions of the Unsafe School Choice Option of the No Child Left Behind Act, a student who attends a “persistently dangerous” school, or is the victim of a violent crime on school grounds, has the same choice options as are available to a student attending a “failing” school as determined by the accountability system. This data will be used to determine whether a school meets the definition of being “persistently dangerous”.

Violent Crime and Weapon Data

The federal SDFSCA and the Gun-Free Schools Act require the Agency to gather data on school-related crimes including possession of or use of a weapon.

Questions regarding the statutory requirements for gathering this data should be addressed to: Tracy Harris, (802) 479-1421 or Tracy.Harris@vermont.gov.

User Support Services

Our goal is to continuously improve our service delivery to meet your needs. The Agency will provide the following resources and support to facilitate the use of this software.

1. A Software Instruction Manual provides a screen-by-screen, step-by-step description of how to install and use the software. The manual can be found on the Agency’s Web site.
2. Each section of the software identifies key Agency of education staff who can provide assistance in responding to that section of the report. These individuals are familiar with the specific program data requirements and are available if this manual does not meet your needs.
3. Technical questions regarding the software can be addressed to the Data Management & Analysis Team at (802) 479-1044.
4. Program and data questions regarding the collection, and any feedback on the collection, please contact Tracy Harris by e-mail Tracy.Harris@vermont.gov or by phone (802) 479-1421.

Definitions

Disciplinary Actions:

Note: If the disciplinary action taken is not listed in the “Action Taken” drop-down field in the application, please select “Other” and indicate the appropriate disciplinary action.

Community service – The student was assigned to perform community service (e.g., cleanup work).

Conference with and warning to student – An administrator discussed the incident with the student and issued a warning regarding the consequences of subsequent offenses.

Conference with and warning to student and parent/guardian – An administrator discussed the incident with the student, issued a warning regarding the consequences of subsequent offenses, and contacted the parent/guardian to discuss the incident.

Detention – The student was assigned to before- or after-school detention or detention at lunch.

Expulsion – The student was removed from his or her regular classroom, barred from school grounds, and the principal asked the school district to expel the student for the remainder of the school year or longer. A student may also be expelled from his/her regular school setting with arrangements for the provision of education services.

No action taken – No consequences resulted from the perpetrator's actions.

No finding (hazing, harassment and bullying only) – A complaint was investigated and there was insufficient evidence to substantiate harassment.

Other – There was a consequence to the perpetrator because of his or her actions, but none of the above categories apply.

Physical restraint - The use of physical means by a trained staff member to prevent imminent harm to a student or other persons, or damage to property. Physical restraint does not including the following: a) Brief periods of physical restriction by direct person-to-person contact, without the aid of material and mechanical devices, accomplished with minimal force and designed either (i) to prevent a student from completing an act that potentially would result in physical harm to him or herself, or another person, or damage to property, or (ii) to remove a disruptive student who is unwilling to voluntarily leave an area; or b) Holding a student's hand or arm to escort the student safely from one area to another.

Restorative conferencing – A conference that brings together the offender(s), victim(s), bystanders, parents, etc. affected by an incident with the purpose being to bring closure to the event and healing to the community.

Seclusionary timeout/Timeout room intensity of harmful behavior or to enable the student to regain composure and return to class or other activity. A planning room or other area used as a

place in which to meet with a student to discuss his or her behavior is not a timeout room.. A timeout room is a designated room apart from a student's assigned class or activity. It is used to separate a student from others for the purpose of eliminating, or at least reducing, the occurrence and/or intensity of harmful behavior or to enable the student to regain composure and return to class or other activity. A planning room or other area used as a place in which to meet with a student to discuss his or her behavior is not a timeout room.

Suspension – The student was temporarily removed from his or her regular classroom and assigned to an in-school-suspension program or removed from the school entirely. A student may also be suspended, out-of-school, with services. In this case, the student was removed from his or her regular classroom and barred from school grounds for a specified length of time and continued to receive educational services.

Suspension, in-school – The student was removed from his or her regular classroom and assigned to an in-school-suspension program.

Suspension, out-of-school – The student was removed from his or her regular classroom and barred from school grounds for a specified length of time and did not receive non-IEP related educational services.

Unilateral removal to interim alternative educational setting – Applies to a student on an IEP or a 504 plan who is removed to an interim alternative educational setting by school personnel for not more than 45 school days if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA); knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or, has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. NOTE: IEP status should be selected as "Yes" only when the offender is on/entitled to benefits of an IEP at the time of the incident.

The definition of an "interim alternative educational setting" is: An appropriate setting determined by the child's IEP team in which the child is placed for no more than 45 school days. This setting enables the child to continue to receive educational services and participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a functional behavioral assessment and behavioral intervention services and modifications to address the behavior violation so that it does not recur.

Incident Type:

Alcohol sale/distribution – Selling alcoholic beverages and/or distributing (i.e., giving away) alcoholic beverages.

Alcohol use/possession – Drinking alcoholic beverages and/or having alcoholic beverages in one's pocket(s), bag(s), car, locker, etc.

Arson – To unlawfully and intentionally damage, or attempt to damage, any school or personal property by fire or incendiary device. Firecrackers, fireworks, and trash can fires would be included in this category if they were contributing factors to a damaging fire.

Assault, aggravated – Attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or for a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the intended harm; or with intent to prevent a law enforcement officer from performing a lawful duty, he causes physical injury to any person.

Assault and robbery causing bodily injury – The taking of, or attempting to take, anything of value that is owned by another person or organization under confrontational circumstances by force or threat of force or violence and/or by putting the victim in fear. A key difference between robbery and theft is that the threat of physical harm or actual physical harm is involved in a robbery.

Assault and robbery with a dangerous weapon – A person who, being armed with a dangerous weapon, assaults another and robs, steals or takes from his person or in his presence money or other property which may be the subject of larceny shall be imprisoned for not more than 15 years or less than one year.

Battery – Touching or striking of another person against his or her will or intentionally causing bodily harm to an individual.

Bullying – 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.

Burglary/breaking and entering – Unlawful entry or attempted entry into a building or other structure with the intent to commit a crime.

Danger to self – Any occurrence or imminent threat of physical harm to oneself.

Disorderly conduct – Any act that disrupts the orderly conduct of a school function; behavior which substantially disrupts the orderly learning environment.

Domestic assault – Any attempt to cause or willfully or recklessly causes bodily injury to a family or household member, or willfully causes a family or household member to fear imminent serious bodily injury shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

Domestic assault, aggravated – Any attempts to cause or willfully or recklessly causes serious bodily injury to a family or household member; or, uses, attempts to use or is armed with a deadly weapon and threatens to use the deadly weapon on a family or household member; or, commits the crime of domestic assault and has been previously convicted of aggravated domestic assault. A person who commits the crime of first degree aggravated domestic assault shall be imprisoned not more than 15 years or fined not more than \$25,000.00, or both. Conduct constituting the offense of first degree aggravated domestic assault under this section shall be considered a violent act for the purpose of determining bail.

Drugs other than alcohol/tobacco sale/distribution – Unlawful distribution or sale of any illegal drugs.

Drugs other than alcohol/tobacco use/possession – Smoking, snorting, injecting, ingesting, or otherwise using an illegal drug.

Fighting – Mutual participation in an incident involving physical violence, where there is no major injury.

Harassment (16 VSA § 11 (26)(A)) – An incident or incidents of verbal, written, visual, or physical conduct 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, 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. (See also sexual harassment; racial harassment.)

Hazing – Any act committed by a person, whether individually or in concert with others, against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization which is affiliated with an educational institution; and which is intended to have the effect of, or should reasonably be expected to have the effect of, humiliating, intimidating or demeaning the student or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in the above acts. Hazing may occur on or off the campus of an educational institution. Hazing shall not include any activity or conduct that furthers legitimate curricular, extracurricular, 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.

Homicide – Killing a human being.

Kidnapping – Unlawful seizure, transportation, and/or detention of a person against his/her will, or of a minor without the consent of his/her custodial parent(s) or legal guardian. This category includes hostage-taking.

Lewd or lascivious conduct – A person guilty of open and gross lewdness and lascivious behavior.

Lewd or lascivious conduct with a child – A person who shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of such person or of such child.

Maiming – Any person with malicious intent to maim or disfigure, who shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut or disable a limb or member of another person, and any person privy to such intent who shall be present aiding in the commission of such offense.

Property damage – Imminent threat of or actual damage to school property.

Racial harassment (16 VSA § 11 (26)(Bii)) – This 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 racial customs.

School conduct/policy violation – This category comprises misbehavior not captured elsewhere. Problem behaviors could include dress code violations, running in the halls, possession of contraband, cheating, lying to authorities, or falsifying records.

School threat--bomb threat – Intentionally making a false report of potential harm from a bomb, dynamite, explosive, or arson-causing device.

School threat--fire alarm – Verbally or otherwise (e.g., ringing alarm bells) making a false report of fire.

School threat--other – The incident cannot be coded in one of the above categories but did involve a school threat.

Sexual assault – Oral, anal, or vaginal penetration forcibly or against the person's will or where the victim is incapable of giving consent. This includes rape, fondling, indecent liberties, child molestation, and sodomy.

Simple assault resulting in bodily injury – Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or negligently causes bodily injury to another with a deadly weapon; or attempts by physical menace to put another in fear of imminent serious bodily injury.

Sexual battery – Oral, anal, or vaginal penetration forcibly or against the person's will or where the victim is incapable of giving consent. This includes rape, fondling, indecent liberties, child molestation, and sodomy.

Sexual harassment (16 VSA § 11 (26)(Bi, BI, BII)) – This means conduct that includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

- submission to that conduct is made either explicitly or implicitly a term or condition of a student's education; and
- 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 is not limited to situations described above. Student on student is more likely to fall under the general definition of harassment.

Stalking – Engage in a course of conduct which consists of following or lying in wait or harassing, and serves no legitimate purpose; and causes the person to fear for his or her physical safety or causes the person substantial emotional distress.

Theft/larceny/robbery – The unlawful taking of property belonging to another person without threat, violence or bodily harm. Electronic theft of data should be coded here. Do not include dealing in stolen goods in this category.

Threat/intimidation – Physical, verbal, written, or electronic action which immediately creates fear of harm, without displaying a weapon and without subjecting the victim to actual physical attack.

Tobacco sale/distribution – Sale of tobacco products (e.g., cigarettes, chewing tobacco) and/or distribution (i.e., giving away) tobacco products.

Tobacco use/possession – Smoking, chewing, or otherwise using tobacco and/or having tobacco in one's pocket(s), bag(s), car, locker, etc.

Trespassing – To enter or remain on a public school campus or school board facility without authorization of invitation and with no lawful purpose for entry.

Unlawful restraint – Knowingly restrains another person under circumstances exposing that person to a risk of serious bodily injury; holds a person in involuntary servitude; takes, entices, or harbors a non-relative under the age of 18 without custodian's consent and knowing he/she has no right to do so; or takes, entices or harbors mentally incompetent or other person entrusted by law to custody of another person or institution without their consent and knowing he/she has no right to do so.

Vandalism--other – Vandalism that cannot be coded as personal or school property.

Vandalism--personal property – Willful destruction or defacement of personal property.

Vandalism--school property – Willful destruction or defacement of school property.

Weapons possession – Possession of an instrument or object to inflict harm on other persons. Both firearms and other weapons should be coded here.

Injury:

Minor injury – A minor injury is one that does not require professional medical attention. Medical attention from the school nurse qualifies the injury as minor unless further medical attention is required.

No injury – No one was physically injured during the course of the incident.

Serious bodily injury – A bodily injury [is one] that involves

- a substantial risk of death; extreme physical pain, protracted and obvious disfigurement; or
- protracted loss or impairment of the function of a bodily member, organ or faculty.
- one that requires professional medical attention which may include but is not limited to, a bullet wound, a stab or puncture wound, fractured/broken bones, concussions, cuts requiring stitches, and any injury with profuse bleeding.

Unknown injury – It is unknown whether or not a person was injured during the course of the incident.

Types of weapons:

Antique firearm –

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica –

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

BB gun – A weapon that expels a small round pellet/BB with air or other propulsion.

Dangerous/deadly weapon (State) – “Deadly weapon” means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

Destructive device -

(A) any explosive, incendiary, or poison gas--,

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter, and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

Firearms (Federal – 18 U.S.C.A. § 921) – The term “firearm” means:

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B) the frame or receiver of any such weapon;

(C) any firearm muffler or firearm silencer;

(D) any destructive device. Such term does not include an antique firearm.

Firearms (State – 13 VSA §4016) – Any weapon, whether loaded or unloaded, which will expel a projectile by the action of an explosive and includes any weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun.

Handgun – The weapon involved was a handgun or pistol.

Knife – A weapon with a blade regardless of the length of the blade.

No weapon – No weapon was used in the incident.

Other – Other objects used as a weapon, including but not limited to chains, nunchakus, brass knuckle, billy club, electrical weapon such as stun gun, or other weapon not included in any other category here.

Other firearm – This includes zip guns, starter guns, flare guns, any weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive. Also the frame or receiver of any weapon described, or firearm muffler/silencer.

Other sharp object – This includes razor blades, ice picks, dirks, Chinese stars, and other pointed instruments when used as a weapon.

Rifle – A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

Shotgun – A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

Substance – Use of a substance (e.g., mace, tear gas) as a weapon.

Unknown weapon – A weapon was used in the incident, but the type is unknown.

Other Definitions

Limited English Proficient (LEP) – A child who meets the definition of a limited English proficient child under the elementary and secondary education act, 20 U.S.C Section 7801 (A)(25). The term “limited English proficient”, when used with respect to an individual, means an individual:

(A) who is aged 3 through 21,

(B) who is enrolled or preparing to enroll in an elementary school or secondary school,

(C), (i) who was not born in the United States or whose native language is a Language other than English,

(ii); (I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) the ability to meet the State’s proficient level of achievement on State assessments described in section 6311 (b)(3) of this title;

- (ii) the ability to successfully achieve in classrooms where the language of instruction is English;
or
- (iii) the opportunity to participate fully in society.

Weapon (State – 13 VSA §4016) – Any instrument or object possessed or used to inflict harm on another person, or to intimidate any person. Examples include firearms, of any kind (operable or inoperable, loaded or unloaded); all types of knives, chains, pipes, razor blades or similar instruments with sharp cutting edges: ice picks, dirks, other pointed instruments (including pencils, pens); nunchackus; brass knuckles; Chinese stars; billy clubs; tear gas guns; electrical weapons or devices (stun guns); BB or pellet guns; and explosives or propellants.

Exhibit C

Bullying Incidents Data Gathering

School districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to the Commissioner of the Vermont Department of Education and to the public.

As stated in the model bullying plan:

Bullying means any overt act or combination of such acts directed against a student by another student or group of students and which:

- a) occurs during the school day on school property, on a school bus, or at a school-sponsored activity;
- b) is intended to ridicule, humiliate, or intimidate the student; and
- c) is repeated over time.

As defined above, bullying is “repeated over time,” and thus requires two or more incidents to meet the definition. (Of course, the incidents must also meet the other two prongs of the definition.) If you are using the Combined Incidence Reporting Software (CIRS) provided by the Department to collect bullying data, school districts may elect to either:

- (1) enter separate incidents into the general misconduct entry screen and run periodic reports to identify multiple incidents with the same victim which may later be moved to bullying category, or
- (2) enter separate incidents into the bullying entry screen and run periodic reports to identify single incidents/one victim that may need to be moved to the general misconduct category.

In either case, to move data from one category to the other, it must be deleted and re-entered. This problem will be corrected in the 05-06 version of the software and we apologize for any inconvenience.

However a school district elects to enter data, once the school district has determined that the conduct has been “repeated over time,” it should count each subsequent incident as one bullying data entry.

Exhibit D

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Friday, April 1, 2016 10:16 AM
To: Lola Duffort
Subject: Public Records Request to State Board of Ed

Lola, the State Board of Education does not have any school-by-school discipline reports because reporting at that level would make it impossible to protect the identity of those individuals involved in these incidents, as required by 20 U.S.C. § 1232g.

Thanks,

Greg

Gregory J. Glennon, General Counsel
Vermont Agency of Education
219 North Main Street, #402
Barre, VT 05641
(802) 479-1756
greg.glennon@vermont.gov

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]
Sent: Friday, March 25, 2016 4:12 PM
To: Gaidys, Maureen
Subject: Public Records Request to State Board of Ed

Dear Ms. Gaidys,

This is a public records request, pursuant to 1 V.S.A. §§ 315-320 for the school by school reports referenced in 16 V.S.A. § 164 (17), for the following school years: 2012-13, 2013-14, and 2014-15. Please feel free to call me at 774-3027 or email me with any questions.

Best,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit E

RE: Data inquiry

Lola Duffort

Tue 1/26/2016 3:55 PM

To: Brackin, Stephanie <stephanie.brackin@vermont.gov>;

Right now I'm trying to figure out exactly what data you have. Richard told me he was probably the person to speak to, but wanted your go-ahead.

Sent from [Outlook Mobile](#)

On Tue, Jan 26, 2016 at 12:47 PM -0800, "Brackin, Stephanie" <Stephanie.Brackin@vermont.gov> wrote:

Hi Lola...let me see who would be best to chat with you about bullying, harassment, and hazing. Also what kind of data do you want...or are you just asking what kind of data do we collect? Once I have a better idea about your story and needs...I can get you connected.

Thanks, Stepahnie

Stephanie Brackin, Agency of Education – Communications and Web Manager

o) 802-479-1170 | e) stephanie.brackin@vermont.gov

219 North Main Street | Suite 402 | Barre City Place | Barre, VT 05641

Connect with AOE on [Twitter](#), [Facebook](#), or the [Web](#)

From: Lola Duffort [mailto:lola.duffort@rutlandherald.com]

Sent: Tuesday, January 26, 2016 3:33 PM

To: Brackin, Stephanie

Subject: Data inquiry

Hi Stephanie,

I reached out to Richard Boltax about bullying, harassment, and hazing data collected by the agency. He would like you to OK us talking further. Could you give him that go-ahead?

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit F

Re: HHB request

Lola Duffort

Wed 1/27/2016 4:54 PM

To: Brackin, Stephanie <Stephanie.Brackin@vermont.gov>;

The five most recent years would be a great. Since you guys collect the information by district, is there no way I can get that? Just district name, number of incidents in a given year, and number of verified incidents in that same year? Surely most district-level data wouldn't require suppression.

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Brackin, Stephanie <Stephanie.Brackin@vermont.gov>
Sent: Wednesday, January 27, 2016 4:20 PM
To: Lola Duffort
Subject: RE: HHB request

It will be at the state-level. Having spoken with our data folks, much of the data would be suppressed due to the low numbers at the district and school level. How far did you want back...? I am trying to not over burden our data folks, they've been trying to complete some complex legislative reports that require some high-level data analysis. The data will be similar to this report: http://education.vermont.gov/documents/EDU-Safe_Schools_2010_2011_Hazing_and_Harassment_Complaints.pdf.

Vermont Department of Education Safe and Healthy Schools ...

education.vermont.gov

Vermont Department of Education Safe and Healthy Schools Hazing and Harassment Complaints
Reported By Vermont Schools 2010-2011 School Year 266 Schools Reporting (81%)

Thanks, Stephanie

Stephanie Brackin, Agency of Education – Communications and Web Manager

o) 802-479-1170 | e) stephanie.brackin@vermont.gov

219 North Main Street | Suite 402 | Barre City Place | Barre, VT 05641

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From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]

Sent: Wednesday, January 27, 2016 4:10 PM

To: Brackin, Stephanie

Subject: RE: HHB request

Thanks! I'll wait... the sooner, the better, but I know how swamped the agency is. In the meantime, any chance you can let me know if the data you have is disaggregated by district or school and how far back it goes?

Sent from [Outlook Mobile](#)

On Wed, Jan 27, 2016 at 12:44 PM -0800, "Brackin, Stephanie" <Stephanie.Brackin@vermont.gov> wrote:
Lola...I think I have tracked this information down and am working with our data folks...but I may not be able to get it to you until tomorrow. Sorry.

Stephanie Brackin, Agency of Education – Communications and Web Manager

o) 802-479-1170 | e) stephanie.brackin@vermont.gov

219 North Main Street | Suite 402 | Barre City Place | Barre, VT 05641

Connect with AOE on [Twitter](#), [Facebook](#), or the [Web](#)

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]

Sent: Wednesday, January 27, 2016 12:47 PM

To: Brackin, Stephanie

Subject: Re: HHB request

Hi Stephanie,

Thanks for what you sent. You're right -- what I'm looking for is different. The report only mentions how many incidents led to **exclusionary disciplinary action**. I'm looking for the number of reported incidents of bullying and the number of incidents that have been verified. Verified incidents of bullying wouldn't, in most cases I think, lead to exclusionary action. According to the AoE's website, what I'm looking for is collected and available:

[Bullying Incidents Data Gathering](#): school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to the Secretary of Education and to the public. This document provides clarifying information for using the Combined Incidence Reporting Software (CIRS) to collect bullying data.

How can I get this data?

Lola Duffort

Rutland Herald

Education reporter

802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Brackin, Stephanie <Stephanie.Brackin@vermont.gov>
Sent: Wednesday, January 27, 2016 12:37 PM
To: Lola Duffort
Subject: HHB request

Lola, Thanks again for your patience.

I have a few things for you. First is the HHB report from May 2015: <http://education.vermont.gov/documents/edu-legislative-report-act129-hhb-council-2015.pdf>. I also have the AOE recently submitted their exclusionary discipline report: <http://legislature.vermont.gov/assets/Legislative-Reports/edu-legislative-report-exclusionary-discipline-response.pdf>. While this report focuses on Exclusionary Discipline, starting on page 30 data is broken out by incident type, including total numbers for bullying incidents that resulted in disciplinary action. From the report, we see evidence that school wide initiatives like PBIS, which we support, reduce the number of exclusionary discipline incidents.

[Report on act 129 of 2012: hazing, harassment and bullying ...](#)

education.vermont.gov

1 Report on Act 129 of 2012: Section 12 Establishing a Hazing, Harassment and Bullying Council Secretary of Education's Advisory Council Report to the House and ...

We also want to highlight HHB's recent efforts in drafting revised [model policies](#) for schools and compiling a list of [designated reporters](#) for schools across Vermont.

I understand this isn't exactly the data you wanted, but it is what we have readily available.

Please let me know if you need anything else. Sincerely, Stephanie

Stephanie Brackin, Agency of Education – Communications and Web Manager

o) 802-479-1170 | e) stephanie.brackin@vermont.gov

219 North Main Street | Suite 402 | Barre City Place | Barre, VT 05641

Connect with AOE on [Twitter](#), [Facebook](#), or the [Web](#)

Exhibit G

RE: Public records request: bullying data

Wed 2/17/2016 2:03 PM

To: Lola Duffort <lola.duffort@rutlandherald.com>;

Hi Lola,

Please find attached the data regarding statewide bullying incidents as requested.

If you have any additional questions, please let me know.

Thank you,

--Judy

From: Lola Duffort [mailto:lola.duffort@rutlandherald.com]

Sent: Tuesday, February 16, 2016 5:22 PM

To: Cutler, Judy

Subject: Re: Public records request: bullying data

Hi Judy,

I've appealed the Agency's decision not to provide me with district-specific data with the Secretary. But since statewide data is readily available and has been offered, I would like to have it.

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>

Sent: Thursday, February 11, 2016 1:37 PM

To: Lola Duffort

Subject: RE: Public records request: bullying data

Hi Lola,

In answer to your question, it is possible, if not likely, that the raw data would be suppressed in many instances in this format. That is because any report showing less than 11 incidents in this context (for a school district), would not be information that the Agency is permitted to release under the student privacy law. We do not maintain this report, so that is an educated estimate on our part. And, as noted in my prior response, under the public records law we are not obligated (in the first instance) to create a record that does not exist.

I hope this provides some clarification as to why we are not able to provide the information in the way you requested.

Thank you ,
Judy

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]
Sent: Tuesday, February 09, 2016 4:17 PM
To: Cutler, Judy
Subject: Re: Public records request: bullying data

Hi Judy,

Perhaps I phrased my request badly -- I am only looking for the number of incidents of reported bullying and the number of incidents of verified bullying incidents, per school district, per school year. Surely the raw number of incidents (both reported and verified), would not in every case -- for every district, in every year -- be suppressed under FERPA? What is the minimum number of incidents required for the information to not be suppressed?

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>
Sent: Tuesday, February 9, 2016 3:02 PM
To: Lola Duffort
Subject: RE: Public records request: bullying data

Hi Lola,
Our data collection tool for this information pulls the district level data into a statewide pool. We could recreate the data at the district level, but any such report, for any school district in the state (largest to smallest), would result in every cell being suppressed and not reportable under the federal student privacy law (FERPA). Moreover, under Vermont law, we are not obligated to create a report which does not exist.

Thanks,

Judy

Judith Cutler

Investigator / Public Records Officer

Vermont Agency of Education

219 North Main Street, Suite 402

Barre, VT 05641

Desk: (802) 479-1760

Email: Judy.Cutler@vermont.gov

My email address has changed. It is now Judy.Cutler@vermont.gov. Please update your contact lists accordingly.

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]

Sent: Monday, February 08, 2016 4:46 PM

To: Cutler, Judy

Subject: Re: Public records request: bullying data

Hi Judy,

How can such records not exist when the Agency's own website says that this information is reported to the Agency? At this link, <http://education.vermont.gov/safe-schools/school-climate/publications>, under the Harassment, Hazing, and Bullying subhead, the Agency states that:

[Bullying Incidents Data Gathering](#): school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to the Secretary of Education and to the public. This document provides clarifying information for using the Combined Incidence Reporting Software (CIRS) to collect bullying data.

If this information is collected from individual districts, how can only a statewide number be available?

Thanks,

Lola Duffort

Rutland Herald

Education reporter

802 774 3027 (office)

802 417 7486 (cell)

@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>

Sent: Monday, February 8, 2016 4:34 PM

To: Lola Duffort

Subject: RE: Public records request: bullying data

Good afternoon Ms. Duffort,

We are unable to provide any responsive documents to your request for reported bullying incidents and the number of verified bullying incidents disaggregated by school district and by school year. Therefore, I can and do certify

pursuant to 1 V.S.A. § 318(a)(4) that no such record exists at this Agency. However, we do maintain reports of bullying incidents disaggregated at the state level by school year, and would be able to provide these to you for the three most recent collection years if you would like. Please advise.

Thank you,
Judy

Judith Cutler
Investigator / Public Records Officer
Vermont Agency of Education
219 North Main Street, Suite 402
Barre, VT 05641
Desk: (802) 479-1760
Email: Judy.Cutler@vermont.gov

My email address has changed. It is now Judy.Cutler@vermont.gov. Please update your contact lists accordingly.

From: Lola Duffort [\[mailto:lola.duffort@rutlandherald.com\]](mailto:lola.duffort@rutlandherald.com)
Sent: Wednesday, February 03, 2016 2:42 PM
To: Brackin, Stephanie
Subject: Public records request: bullying data

Hi Stephanie,

This is a public records requests pursuant to 1 V.S.A. §§ 315-320 for the data collected by the Agency of Education from school districts statewide each year regarding the number of reported bullying incidents and the number of verified bullying incidents.

I would like the three most recent years for which the data have been collected, and I would like the data disaggregated by school district and by school year.

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit H

Re: Public Records Request Appeal

Glennon, Greg <Greg.Glennon@vermont.gov>

Mon 2/22/2016 6:58 PM

To: Lola Duffort <lola.duffort@rutlandherald.com>;

Cc: Holcombe, Rebecca <Rebecca.Holcombe@vermont.gov>;

Dear Lola, per Secretary Holcombe, the denial of your records request (by Judy Cutler, AOE Public Records Officer) is affirmed. We do collect raw state level data (for bullying incidents) but we do not subsequently create a district by district report, as you have requested. We are not obligated to create a record that does not exist, under the public records law. See 1 V.S.A. § 316(i).

Thanks,

Greg Glennon
General Counsel

----- Forwarded message -----

From: "Lola Duffort" <lola.duffort@rutlandherald.com>

Date: Tue, Feb 16, 2016 at 1:38 PM -0800

Subject: Public Records Request Appeal

To: "Holcombe, Rebecca" <Rebecca.Holcombe@vermont.gov>

Dear Secretary Holcombe,

I am writing to appeal a public records request denial.

On Feb. 3, I submitted a records request by email asking for the “the data collected by the Agency of Education from school districts statewide each year regarding the number of reported bullying incidents and the number of verified bullying incidents.”

I specified that I sought “the three most recent years for which the data have been collected” and that “I would like the data disaggregated by school district and by school year.”

On Feb. 8, I was told by Public Records Officer Judy Cutler via email that the Agency was “unable to provide any responsive documents to your request for reported bullying incidents and the number of verified bullying incidents disaggregated by school district and by school year. Therefore, I can and do certify pursuant to 1 V.S.A. § 318(a)(4) that no such record exists at this Agency. However, we do maintain reports of bullying incidents disaggregated at the state level by school year, and would be able to provide these to you for the three most recent collection years if you would like.”

In subsequent emails, I was told that even though the Agency did in fact have this information and “could

recreate the data at the district level” that “under Vermont law, we are not obligated to create a report which does not exist.”

(I have attached in .pdf format the full thread of my correspondence with Agency personnel relating to my records request.)

A “public record” is defined as, “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.” It is true that “if a record does not exist” the AOE is under no obligation to provide it. However, in this case, it seems that the AOE (by its own admission) does have the information that I seek (bullying data for each school district). Since the Agency admits the information is available, it should be accessible under the public records act.

Additionally, I have been told that much of the information I seek would be suppressed under FERPA. But the public records act states that a record “shall not be withheld in its entirety because it contains identities or information that have been redacted.”

I look forward to your response.

Sincerely,
Lola Duffort

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit I

RE: Bullying incident data records request

Glennon, Greg <Greg.Glennon@vermont.gov>

Fri 3/4/2016 2:58 PM

To: Lola Duffort <lola.duffort@rutlandherald.com>; Cutler, Judy <Judy.Cutler@vermont.gov>;

Cc: Holcombe, Rebecca <Rebecca.Holcombe@vermont.gov>;

Lola, we do not maintain any school district or supervisory union level reports due to small cell sizes. This ensures we do not have a breach of the type of personally identifiable information that you are requesting, which might violate federal or state privacy laws.

Therefore, we do not possess any records responsive to your request. Have a nice weekend.

Thanks,

Greg

From: Lola Duffort [mailto:lola.duffort@rutlandherald.com]

Sent: Friday, March 04, 2016 2:47 PM

To: Cutler, Judy; Glennon, Greg

Cc: Holcombe, Rebecca

Subject: Bullying incident data records request

Hi Judy, Greg,

This is a public records request for each and every database submitted to the Agency of Education by each reporting school district or supervisory union regarding that district or supervisory union's bullying incident data for the 2012-2013, 2013-2014, and 2014-2015 school years.

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit J

RUTLAND HERALD



March 7, 2016

Dear Secretary Holcombe,

I am writing to appeal a public records denial received March 4.

On March 4, I submitted by email a public records request to Judy Cutler and Greg Glennon of the Agency of Education for “for each and every database submitted to the Agency of Education by each reporting school district or supervisory union regarding that district or supervisory union's bullying incident data for the 2012-2013, 2013-2014, and 2014-2015 school years.”

In response to that request, Greg Glennon told me that the Agency does “not maintain any school district or supervisory union level reports due to small cell sizes. This ensures we do not have a breach of the type of personally identifiable information that you are requesting, which might violate federal or state privacy laws. Therefore, we do not possess any records responsive to your request.”

Attached is a .pdf document of my exchange with Agency personnel regarding this request.

I am confused about how the Agency can maintain that they do not maintain “school district or supervisory union level reports” regarding bullying incident data in deference to privacy laws given that the Agency’s own website states this data must be collected, reported to the Agency, and made public by individual school districts. Here is the relevant link to the Agency’s webpage:

<http://education.vermont.gov/safe-schools/school-climate/publications>

I respectfully appeal this denial and ask the Agency to release the requested records.

Sincerely,



Lola Duffort

Exhibit K

INDEX: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z #

Safe Schools

[Overview](#) [School Climate](#) [Crisis Planning](#) [Resources](#) [Blog](#) [Reports & Publications](#) [Advisory Council](#)

Safe Schools Reports & Publications

This page contains publications, reports, guidelines, brochures and other materials which have been created to assist educators, administrators and families.

- [Behavioral Challenges](#)
- [Harassment, Hazing, and Bullying](#)
- [Health](#)
- [Model Policies](#)

Behavioral Challenges

[Building Effective Strategies for Teaching \(BEST\) Students with Behavioral Challenges \(Pyramid of School Discipline\)](#)

[Building Effective Strategies for Teaching \(BEST\) Students with Behavioral Challenges Project](#)

[A Guide to Positive School Discipline\(2006\)](#)

[Guidelines for Discipline Plan Development](#)

[Preventing and Responding to School Disruption and Violence](#)

Harassment, Hazing, and Bullying

[Bullying Incidents Data Gathering](#): school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to the Secretary of Education

and to the public. This document provides clarifying information for using the Combined Incidence Reporting Software (CIRS) to collect bullying data.

[The Bullying and Harassment Paradox](#): An article that outlines a framework for using "restorative practices" that indicated how it might be used at all levels of education and the behavioral as well as academic performance benefits that are invariable benefits. NOTE: A number of schools have already contacted the International Institute for Restorative Practices to initiate [professional development training](#) during the summer of 2010.

[Harassment, Hazing, and Bullying Prevention Advisory Council](#): Per Act No. 129 of 2012, the Secretary of Education established an advisory council to provide advice and recommendations on harassment, hazing, and bullying prevention strategies and resources, and to coordinate statewide activities related to the prevention of and response to harassment, hazing, and bullying.

[Hazing & Harassment Complaints Reported by Vermont Schools](#): The agency collects statewide hazing, harassment and bullying data from all public schools as required under 16 V.S.A. §164. Individual school data may be obtained by contacting the school directly.

[Hazing, Harassment, Bullying, Suicide and Substance Abuse Prevention Training Resources](#) is a list of organizations and individuals who provide hazing, harassment, bullying, suicide prevention and substance abuse prevention training (required by Act 182, sec. 27). For questions or information, contact Greg Glennon, General Counsel at (802) 479-1756 or greg.glennon@vermont.gov

Independent Reviewers

[Reviewer List](#) is an alphabetical listing of statewide independent reviewers.

[Brochure](#) provides basic information for students, parents and staff explaining the "independent review" process available to complainants and schools after a harassment complaint has been filed. Independent review offers a second look at the school's handling of harassment complaints by a neutral third party.

[Information on Hazing, Harassment, Bullying, Suicide and Substance Abuse Prevention Training gathered by the Vermont Agency of Education](#): Act 182 of 2006 requires the Secretary of education to compile information and make available to schools the names of organizations and individuals who have provided effective hazing, harassment, bullying, suicide, or substance abuse prevention training for staff or students, or both.

[Policy on the Prevention of Bullying of Students](#)

[Student Harassment](#): an Agency of Education model policy may be used by supervisory unions/school districts to formalize policies and procedures for identifying and reporting the unlawful harassment of students based on race, color, religion, national origin, marital status, sex, sexual orientation, gender identity or disability. Vermont law requires schools to adopt a policy "at least as stringent as [this] model policy."

Unsafe School Choice Option Rule

This rule defines "persistently dangerous" schools, as required by the No Child Left Behind Act (NCLBA). Under provisions of NCLBA's Unsafe School Choice Option, a student who attends a "persistently dangerous" school or who is the victim of a violent crime on school grounds, has the same choice options as are available to a student attending a "failing" school, as determined by the accountability system. View [Vermont State Board of Education rules and regulations](#) (Rule series 4000).

[Vermont Human Rights Commission](#)

Health

[HIV/AIDS Prevention Education for Vermont Youth Needs Assessment Project](#)

[Legal & Technical Resources Related to Life-Threatening Chronic Allergies and Illnesses in Schools \(Act 158\)](#)

[SAFE-T™ Program \(Sexual Abuse Free Environment for Teens™\)](#)

Model Policies

Model policies provide guidance, direction and recommended standards to help school administrators develop general school policy statements. Policies may be developed based on requirements of state or federal laws or at the request of the Vermont State Board of Education or the Vermont Legislature. [View the model policies.](#)

Questions?

Richard Boltax at richard.boltax@vermont.gov or (802) 479-1399

Tracy Harris at tracy.harris@vermont.gov or (802) 479-1421

Page Last Updated on April 26, 2016

Contact Us

AOE.EdInfo@vermont.gov
(802) 479-1030

Phone, Location, and Hours

About the Agency

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Exhibit L

Public Records Appeal to Secretary Holcombe

Glennon, Greg <Greg.Glennon@vermont.gov>

Mon 3/14/2016 12:37 PM

To: Lola Duffort <lola.duffort@rutlandherald.com>;

Dear Lola, per Secretary Holcombe, your records appeal of 3/7/16 to the Secretary is denied. We do not possess these records. You may want to contact the local school district(s) for this information.

Thanks,

Greg Glennon

Exhibit M



March 18, 2016

SENT VIA ELECTRONIC MAIL

Greg Glennon
General Counsel
Agency of Education
25 Main St., Barre, VT

RE: Denial of Lola Duffort's Public Records RequestS

Dear Greg:

The ACLU of Vermont has received a complaint from Lola Duffort, a staff reporter with the Rutland Herald, regarding the denial of public records requests she sent to the Vermont Agency of Education (AOE). She requested a school-by-school or district/supervisory-by-district/supervisory union count of bullying complaints/incidents and verified bullying incidents in Vermont from 2012-13 through 2014-2015 school years. She asked for this data several times informally. She requested the data formally on two separate occasions. The two formal requests were similar, but stated in a slightly different manner in an effort to clarify her original request based on information provided to her by AOE officials. Her informal and formal requests were denied at different times based on different grounds. She appealed the two formal denials and was further denied by the Secretary both times. The grounds for informal and formal denial are summarized as follows:

- January 27, 2016
 - Stephanie Bracken, AOE Communications and Web Manager:
 - Only state level data is available.
 - "Much of the data would be suppressed due to the low numbers at the district and school level."
 - "I'm trying not to over burden our data folks."
- February 8, 2016
 - Judy Cutler, AOE Education Investigator:
 - No such record exists within the AOE.
- February 9, 2016
 - Judy Cutler, AOE Education Investigator:
 - The data collection tool "pulls district level data into a statewide pool."
 - No such record of district-by-district bullying data exists within the AOE.

- If district-by-district bullying data were available, it would be suppressed by federal privacy law.
 - We are not obligated to create a report that does not already exist.
- February 11, 2016
 - Judy Cutler, AOE Education Investigator:
 - It is an “educated estimate” that all district level data would be suppressed.
- February 22, 2016
 - Greg Glennon, AOE General Counsel:
 - We collect raw state level data for bullying incidents. No district-by-district-report exists.
- March 3, 2016
 - Secretary Holcombe via Greg Glennon, AOE General Counsel:
 - Data collection tool “pulls district data into a statewide pool.”
 - Completed “databases” from each district are returned to the AOE every year. That data is “pulled into a state-level database” by the AOE.
- March 4, 2016
 - Greg Glennon, AOE General Counsel:
 - AOE does not maintain any school district or supervisory union level reports to ensure that AOE does not have a breach of federally-protected confidential student information.
 - We do not possess any records responsive to your request.
- March 14, 2016
 - Secretary Holcombe via Greg Glennon, AOE General Counsel:
 - AOE does not possess these records.

Ms. Duffort’s understanding from AOE documents and state law is that the AOE maintains or is required to maintain the data she requested. For instance, the AOE’s 2014-2015 Combined Incident Reporting Software Instructions, the document that informs schools how to annually report bullying and other incidents to the AOE, acknowledges that state law “requires the Secretary to report annually, on a school-by-school basis, the number and types of complaints” of harassment, hazing, and bullying. The data collection’s stated purpose is to allow the AOE to assess individual school compliance with federal and state law regarding hazing, harassment, and bullying. Furthermore, 16 V.S.A. § 164 (17) requires the State Board of Education, of which the Secretary is a member, to report annually on a statewide and school-by-school basis, the number and types of complaints of harassment, hazing, or bullying” and “responses to the complaints.” Nevertheless, Ms. Duffort was denied access to this very report because, as stated by AOE personnel, either no such report exists or the data was not collected.

On March 15th, I spoke to you on the phone regarding these record request denials. In the hopes of determining whether there was a misunderstanding of how the data collection is conducted, I asked you about the methods of collection. You were unable to answer my questions. After denying me the opportunity to speak to IT staff regarding the data collection specifics, you asked me to put my questions in writing. Similarly, when I asked about the legal requirement that the State Board, and by extension AOE, create a school-by-school bullying report, as required under

16 V.S.A. § 164(17), you asked me to put my questions in writing. Below are the ACLU of VT's questions and requests for responses related to Ms. Duffort's public records requests:

1. Please explain, step-by-step, the data collection process for bullying complaints/incidents and verified bullying incidents, starting from the individual school and ending with the AOE production of the statewide totals.
2. Please explain how the AOE aggregates a statewide total number of bullying complaints/incidents and verified bullying incidents.
3. Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each school?
4. Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each district/supervisory union?
5. Does the AOE at any time add up the individual incidents from each school, district, and/or supervisory union to determine the number of incidents at each school, district, and/or supervisory union?
6. After the number of bullying complaints/incidents and verified bullying incidents is aggregated by school, district, and/or supervisory union, what does the AOE do with these counts/data?
7. Please explain how the AOE can aggregate a statewide total number of bullying complaints/incidents and verified bullying incidents without first knowing or aggregating the number of incidents by school, district, and/or supervisory union.
8. Please explain the State Board of Education's and AOE's lack of a report of school-by-school bullying complaints and responses to those complaints as required by 16 V.S.A. § 164(17).
9. If the AOE has not completed or published a school-by-school report of bullying incidents as required by 16 V.S.A. § 164(17) because it is concerned about violating FERPA protections, please explain why the AOE has not published a redacted version of the report and has refused to provide a redacted version of the report to Ms. Duffort as required by 1 V.S.A. § 318(e).
10. Please provide a date and time in the next week where I can speak to a knowledgeable AOE IT employee to discuss the data collection process for bullying incidents and confirm your responses to the questions in this letter.

It is unfortunate that I have been prevented from contacting the AOE's IT team, as I am sure they could help me clear this up more quickly. The Public Records Act (1 V.S.A. §§ 315 *et. seq.*) envisions collaboration and assistance by State personnel to requestors of public records. The AOE has not explained to Ms. Duffort why it does not create the school-by-school report required by state law or produce a redacted version where federal privacy law would limit publishable data. The lack of explanation is concerning and in contravention of the spirit of the Public Records Act.

Ms. Duffort has a limited amount of time to appeal the AOE's denial of her request in superior court. To facilitate a productive conversation and prevent unnecessary litigation, please respond in writing to the questions and stated facts in this letter no later than March 25, 2016. You can contact me via email at jdiaz@acluvt.org.

Thank you.

Sincerely,

s/Jay Diaz

Jay Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont

Exhibit N

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Friday, March 18, 2016 11:01 AM
To: 'Jay Diaz'
Subject: RE: Letter re: Lola Duffort PRR

Jay, in reply to your letter, the AOE distributes a blank/template Microsoft Access database to school districts each year. The AOE's method of collecting hazing/harassment/bullying information (through Microsoft Access database templates) does not create an existing (school district level) record because the databases used for collection are designed as a normalized database schema with data separated across multiple database tables. There is no way for us to link the entirety of what is reported to us via these individual databases in a coherent way without creating a new query in each database for this specific purpose.

Further, the AOE does not receive the actual databases that district personnel use to report these data. Instead, district personnel return five separate text extract files for each school via secure FTP to the AOE. These files are extracts of individual tables from these data collection template databases and, once received, are imported into the state-level database in order to create the state-level reports. Since the same secure FTP process is used each year for this collection, the raw text files submitted to the AOE are purged from the FTP directories every year. As such, we only have data reported from the 2015 school year at the district level and even then the data are still in five separate text files for each school. There would be no way to generate a report from these files without pulling them into a database and writing a new database query to group the data together. In other words, we would have to create a new record to get the information at school district level.

Regardless of whether the AOE had these data in individual databases or via the text extract files, the larger and more important point is that it would constitute the creation of new records to pull them together via a new query/report to respond to your request. We are prohibited from providing the raw databases and/or text files as they currently exist because they contain personally identifiable information. This is why the AOE goes to the effort to aggregate to the state-level reports and then suppresses the data as necessary to avoid reporting small cell sizes even within the state-level reports.

Here is a link to our webpage about HHB reporting to AOE. You'll note that this page states the following regarding this data:

["Hazing & Harassment Complaints Reported by Vermont Schools"](#): The agency collects statewide hazing, harassment and bullying data from all public schools as required under 16 V.S.A. §164. Individual school data may be obtained by contacting the school directly.

Ms. Duffort should contact the custodians of these records directly if she would like to see what may be available as a public record.

Lastly, the AOE is a represented party (by me) with respect to the public records request of Ms. Duffort. You are acting as an attorney on behalf of the Rutland Herald. Your letter states this matter may result in a lawsuit against the State. I do not consent to you speaking Agency staff about this issue since it involves possible related litigation.

Thanks,

Greg

Gregory J. Glennon, General Counsel

Vermont Agency of Education
219 North Main Street, #402
Barre, VT 05641
(802) 479-1756
greg.glennon@vermont.gov

From: Jay Diaz [<mailto:jdiaz@acluvt.org>]
Sent: Friday, March 18, 2016 10:39 AM
To: Glennon, Greg
Subject: Letter re: Lola Duffort PRR

Greg,

Attached is a letter with our questions, in writing as you requested, regarding Lola Duffort's public record requests.

I look forward to receiving your written response.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

Exhibit O

Jay Diaz

From: Jay Diaz <jdiaz@aclvt.org>
Sent: Thursday, March 24, 2016 2:30 PM
To: 'Glennon, Greg'
Subject: RE: Letter re: Lola Duffort PRR

Greg,

As it pertains to my last email, here are two examples of questions similar to those in my letter that you did not answer:

Why can the AOE not provide Ms. Duffort redacted versions of the bullying incident files/data/databases/etc.?

And, why does the AOE or State Board not have a school-by-school report of bullying data as required by 16 V.S.A. 164(17)?

Thank you.

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at aclvt.org
Like to donate? Do it now!
Follow us @ aclvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

From: Jay Diaz [mailto:jdiaz@aclvt.org]
Sent: Thursday, March 24, 2016 1:27 PM
To: 'Glennon, Greg'
Subject: RE: Letter re: Lola Duffort PRR

Greg:

You have not answered several of the questions outlined in my letter. Please answer them in their entirety by Wednesday, March 31st.

Also, under what authority is the AOE deleting the "FTP directories" on an annual basis?

You should allow me to speak to the IT people. We am not representing anyone at this time, and could easily make the same request. According to the statute, a public agency is supposed to work with a requestor to assist in the clarification of request. Please let me know a person and time that I can speak with a knowledgeable person by Wednesday, March 31st.

Thank you.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304

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From: Glennon, Greg [<mailto:Greg.Glennon@vermont.gov>]

Sent: Friday, March 18, 2016 11:01 AM

To: 'Jay Diaz'

Subject: RE: Letter re: Lola Duffort PRR

Jay, in reply to your letter, the AOE distributes a blank/template Microsoft Access database to school districts each year. The AOE's method of collecting hazing/harassment/bullying information (through Microsoft Access database templates) does not create an existing (school district level) record because the databases used for collection are designed as a normalized database schema with data separated across multiple database tables. There is no way for us to link the entirety of what is reported to us via these individual databases in a coherent way without creating a new query in each database for this specific purpose.

Further, the AOE does not receive the actual databases that district personnel use to report these data. Instead, district personnel return five separate text extract files for each school via secure FTP to the AOE. These files are extracts of individual tables from these data collection template databases and, once received, are imported into the state-level database in order to create the state-level reports. Since the same secure FTP process is used each year for this collection, the raw text files submitted to the AOE are purged from the FTP directories every year. As such, we only have data reported from the 2015 school year at the district level and even then the data are still in five separate text files for each school. There would be no way to generate a report from these files without pulling them into a database and writing a new database query to group the data together. In other words, we would have to create a new record to get the information at school district level.

Regardless of whether the AOE had these data in individual databases or via the text extract files, the larger and more important point is that it would constitute the creation of new records to pull them together via a new query/report to respond to your request. We are prohibited from providing the raw databases and/or text files as they currently exist because they contain personally identifiable information. This is why the AOE goes to the effort to aggregate to the state-level reports and then suppresses the data as necessary to avoid reporting small cell sizes even within the state-level reports.

Here is a link to our webpage about HHB reporting to AOE. You'll note that this page states the following regarding this data:

[“Hazing & Harassment Complaints Reported by Vermont Schools:](#) The agency collects statewide hazing, harassment and bullying data from all public schools as required under 16 V.S.A. §164. Individual school data may be obtained by contacting the school directly.“

Ms. Duffort should contact the custodians of these records directly if she would like to see what may be available as a public record.

Lastly, the AOE is a represented party (by me) with respect to the public records request of Ms. Duffort. You are acting as an attorney on behalf of the Rutland Herald. Your letter states this matter may result in a lawsuit against the State. I do not consent to you speaking Agency staff about this issue since it involves possible related litigation.

Thanks,

Greg

Gregory J. Glennon, General Counsel
Vermont Agency of Education
219 North Main Street, #402
Barre, VT 05641
(802) 479-1756
greg.glennon@vermont.gov

From: Jay Diaz [<mailto:jdiaz@acluvt.org>]
Sent: Friday, March 18, 2016 10:39 AM
To: Glennon, Greg
Subject: Letter re: Lola Duffort PRR

Greg,

Attached is a letter with our questions, in writing as you requested, regarding Lola Duffort’s public record requests.

I look forward to receiving your written response.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
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Like to donate? Do it now!
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Exhibit P

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Monday, April 04, 2016 12:11 PM
To: Jay Diaz (jdiaz@acluvt.org)
Subject: Reply to request for additional information

Follow Up Flag: Follow up
Flag Status: Flagged

Jay, here are the AOE's responses to your questions, as you requested in your email of 3/24/16.

Thanks,

Greg

ACLU Request #1: Please explain, step-by-step, the data collection process for bullying complaints/incidents and verified bullying incidents, starting from the individual school and ending with the AOE production of the statewide totals.

AOE Response: Each school year, the AOE prepares a blank Microsoft Access database that may be used by district personnel to gather incident data for the purposes of reporting required information to the AOE at the end of that year. These databases are templates that ensure that incident data that they are required to report (including but not limited to hazing, harassment, and bullying incidents) are entered using and including appropriate codesets, mandatory fields, and related information. This data collection is called CIRS (Combined Incident Reporting Survey/Software).

Schools/district personnel have their own local processes and systems to record incident data and many do not record incidents in these data collection templates until the end of the year when they refer to their own local systems/processes and transfer information between the two systems for the purposes of fulfilling reporting requirements to the AOE. Some schools/districts may opt to incorporate the same business rules/codesets/etc. in their local systems and may never have the need to utilize the data collection template that the AOE provides even though we recommend that all data are run through these templates to improve data quality. Regardless of whether or not schools/districts use the CIRS data collection templates provided by AOE, they ultimately use one of these aforementioned processes to ensure referential integrity – that is, appropriate association of information across database tables (e.g. an 'action' record is associated to valid 'incident' and 'offender' database record identifiers; each 'incident' has at least one corresponding 'offender'/'victim' record; etc.) – prior to preparing extracted information to send to the AOE.

The AOE has set up a secure FTP (file transfer protocol) process that provides role- and organization-based access for school/district personnel to securely submit data to the AOE. The format of what is submitted is text (.txt) or comma separated variable (.csv) extracts of five separate tables that mirror the table structure of a AOE version of the data collection template into which these five files for each school will be imported. This FTP process was put in place last year as an effort to help reporting entities send this information in a secure electronic format versus having to burn these extracted data onto CDs and pay to physically mail them to the AOE. Since the FTP process is solely the process that allows these data to be transferred, and in order to maximize taxpayer dollars that pay for the server/storage space of these intermediary records, the FTP

directories are set up for each reporting entity to transfer the data to the state-level AOE database and, once that year's data have been successfully transmitted, are cleared prior to the next year's collection period.

It should be noted that this describes the process the AOE uses to collect information that allows us to create state-level reports. The CIRS database templates that are provided for use by every school also include pre-built queries that allow school-level incident data to be reported, to the extent that schools determine the information public and non-confidential, at a school-by-school basis. It is for this reason that the AOE instructs requestors for this information to contact schools directly as they are custodians of this information.

ACLU Request #2: Please explain how the AOE aggregates a statewide total number of bullying complaints/incidents and verified bullying incidents.

AOE Response: Once these five extract files are received by the AOE, AOE personnel import these data into the state-level database via an established visual basic for Access (VBA) database process. These personnel then generate the state-level report on hazing, harassment, and bullying, taking care to suppress small cells prior to publication. This report is based off of a predefined query that allows the AOE to pull the same information related to these categories of incidents every year for as close to an apples-to-apples comparison over time as is possible.

ACLU Request #3: Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each school?

Response: The aforementioned CIRS database templates are provided with the expectation that incident data will be reported separately for each school. Some schools will populate and provide this information by themselves without coordination across the district/supervisory union and some districts will extract this same information from a district-wide system for each of their schools. Regardless of whether it is an individual school working alone or district personnel reporting for multiple schools, they are required to submit separate extract files for each school. As was mentioned previously, this data collection is designed to collect information regarding many types of incidents which includes but is not limited to hazing, harassment, and bullying. All incidents are reported together (i.e. bullying incidents are not reported separately from a weapons incident or from a vandalism incident or from a school conduct violation incident) in these extracted files.

ACLU Request #4: Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each district/supervisory union?

Response: The aforementioned CIRS database templates are provided with the expectation that incident data will be reported separately for each school. Some schools will populate and provide this information by themselves without coordination across the district/supervisory union and some districts will extract this same information from a district-wide system for each of their schools. Regardless of whether it is an individual school working alone or district personnel reporting for multiple schools, they are required to submit separate extract files for each school. As was mentioned previously, this data collection is designed to collect information regarding many types of incidents which includes but is not limited to hazing, harassment, and bullying. All incidents are reported together (i.e. bullying incidents are not reported separately from a weapons incident or from a vandalism incident or from a school conduct violation incident) in these extracted files.

ACLU Request #5: Does the AOE at any time add up the individual incidents from each school, district, and/or supervisory union to determine the number of incidents at each school, district, and/or supervisory union?

Response: The AOE only runs the state-level report that has been built into the state-level database. Since the CIRS software includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports here.

ACLU Request #6: After the number of bullying complaints/incidents and verified bullying incidents is aggregated by school, district, and/or supervisory union, what does the AOE do with these counts/data?

Response: The AOE only runs the state-level report that has been built into the state-level database. The AOE does not aggregate this information at a school/district/supervisory union-level.

ACLU Request #7: Please explain how the AOE can aggregate a statewide total number of bullying complaints/incidents and verified bullying incidents without first knowing or aggregating the number of incidents by school, district, and/or supervisory union.

Response: The raw data reported to the AOE at the school-level is pulled into a state-level database where an established query aggregates all hazing, harassment, and bullying incidents for the state-level report. There is no need to aggregate at any level lower than that in order to create a state-level report.

ACLU Request #8: Please explain the State Board of Education's and AOE's lack of a report of school-by-school bullying complaints and responses to those complaints as required by 16 V.S.A. § 164(17).

Response: The AOE provides queries in the CIRS data collection templates that allows each school to report information at the school-level to the extent that they are permitted under FERPA. The AOE feels that this approach is the most responsive to this requirement because it provides this information to school personnel who may then disclose this information to the extent that it may be made public.

ACLU Request #9: If the AOE has not completed or published a school-by-school report of bullying incidents as required by 16 V.S.A. § 164(17) because it is concerned about violating FERPA protections, please explain why the AOE has not published a redacted version of the report and has refused to provide a redacted version of the report to Ms. Duffort as required by 1 V.S.A. § 318(e).

Response: The AOE provides queries in the CIRS data collection templates that allows each school to report information at the school-level to the extent that they are permitted under FERPA. The AOE feels that this approach is the most responsive to this requirement because it provides this information to school personnel who may then disclose this information to the extent that it may be made public. The AOE has instructed any and all requestors that seek school-level information to contact the schools directly as they are the custodians of these records. The AOE declines to recreate reports that are already available at each school or to create new reports for this purpose, especially given the fact that this taxpayer funded exercise would result in reports that are fully redacted in most, if not all, cases.

ACLU Request #10: Please provide a date and time in the next week where I can speak to a knowledgeable AOE IT employee to discuss the data collection process for bullying incidents and confirm your responses to the questions in this letter.

Response: AOE processes are spelled out in detail in this response.

Exhibit Q

Jay Diaz

From: Lola Duffort <lola.duffort@rutlandherald.com>
Sent: Wednesday, April 13, 2016 10:50 AM
To: Jay Diaz
Subject: Fw: Public Records Denial Appeal

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Wednesday, April 13, 2016 10:48 AM
To: Lola Duffort
Subject: RE: Public Records Denial Appeal

Dear Lola,

Per Chair Morse, the SBE does not maintain these records for the reasons I cited in my correspondence to you dated 3/25/16.

Thanks,

Greg

From: [Lola Duffort](#)
Sent: Tuesday, April 12, 2016 4:19 PM
To: Stephan@sover.net
Subject: Public Records Denial Appeal

Dear Mr. Morse,

I am writing to appeal a public records denial.

On March 25, I submitted a public records request to the State Board of Education via email to Maureen Gaidys for "the school by school reports referenced in 16 V.S.A. § 164 (17), for the following school years: 2012-13, 2013-14, and 2014-15."

On April 1, I received the following response, via email, from Agency of Education attorney Greg Glennon.

“The State Board of Education does not have any school-by-school discipline reports because reporting at that level would make it impossible to protect the identity of those individuals involved in these incidents, as required by 20 U.S.C. § 1232g,” he wrote.

Mr. Glennon did not advise me of my appeal rights, but as the chairman of the Board of Education, I believe you are the person I must appeal a public records denial to pursuant to 1 VSA § 318 (a).

I am confused as to how AoE personnel can claim that reports required by statute for the State Board of Education to compile do not exist because of federal privacy laws. Privacy laws certainly do prohibit public agencies from releasing certain information from the public, but they do not preclude those agencies from compiling and analyzing this information — especially if doing so is specifically required by law.

I respectfully request these reports be released, with redactions where appropriate.

Sincerely,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Exhibit R

Jay Diaz

From: Jay Diaz <jdiaz@acluvt.org>
Sent: Thursday, April 28, 2016 3:53 PM
To: 'Glennon, Greg'
Subject: RE: Reply to request for additional information

Follow Up Flag: Follow up
Flag Status: Flagged

Greg:

On behalf of Lola Duffort, I have a follow-up question to your response and a request.

In your response below, and in other responses I have received from you in this matter, you have said that the CIRS files sent from schools to the AOE are “cleared” or “purged” after their data are transmitted to the AOE state-level database. However, you have not provided me with the requested citation to the legal authority for the clearing or purging of these files. Please provide the authority. I have tried to find the authority myself by conducting my own research and contacting the Secretary of State’s Office, but have not been successful in finding it.

Also, please provide me with the AOE’s general record schedule and any policy documents or directives regarding the record schedule’s implementation. If there are any other record schedules, disposition orders, or other policy documents relating to the AOE’s retention of the aforementioned CIRS and/or bullying data, please send those to me as well.

I look forward to your response. Given that it’s the end of the legislative session, I understand if this will be difficult to handle quickly. Can you respond by the end of next week? If that doesn’t work, please let me know what would be a realistic deadline.

Thank you.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

From: Glennon, Greg [mailto:Greg.Glennon@vermont.gov]
Sent: Monday, April 04, 2016 12:11 PM

Exhibit S

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Tuesday, May 03, 2016 1:23 PM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information
Attachments: Records Management Plan_Transitory Records_AOE_Effective 01 01 13.pdf; General Records Schedule_04 21 11.pdf

Jay, the data extract files sent via secure FTP by the schools/districts to the AOE are transitory records. As previously described, the data contained within these files are imported into and retained within the AOE state-level database. Therefore, once they have been processed, the extract files themselves are administratively obsolete. Specifically, the AOE's legal authority to delete these transitory records is provided for via its agency wide adoption of VSARA's Transitory Records General Records Schedule (GRS), Schedule No. GRS-1000.1000 ([see attached](#)).

Also (per your request) I am attaching AOE's signed, formal adoption of the General Record Schedules developed/maintained by VSARA. The General Record Schedules are posted on the VT Sec. of State's website at the following link and contain short summaries of the various schedules: <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx>.

Thanks,

Greg

From: Jay Diaz [mailto:jdiaz@aclvt.org]
Sent: Thursday, April 28, 2016 3:53 PM
To: Glennon, Greg
Subject: RE: Reply to request for additional information

Greg:

On behalf of Lola Duffort, I have a follow-up question to your response and a request.

In your response below, and in other responses I have received from you in this matter, you have said that the CIRS files sent from schools to the AOE are "cleared" or "purged" after their data are transmitted to the AOE state-level database. However, you have not provided me with the requested citation to the legal authority for the clearing or purging of these files. Please provide the authority. I have tried to find the authority myself by conducting my own research and contacting the Secretary of State's Office, but have not been successful in finding it.

Also, please provide me with the AOE's general record schedule and any policy documents or directives regarding the record schedule's implementation. If there are any other record schedules, disposition orders, or other policy documents relating to the AOE's retention of the aforementioned CIRS and/or bullying data, please send those to me as well.

I look forward to your response. Given that it's the end of the legislative session, I understand if this will be difficult to handle quickly. Can you respond by the end of next week? If that doesn't work, please let me know what would be a realistic deadline.

Thank you.

Exhibit T



120 State Street, Montpelier VT 05620-2501
(p) 802-828-3135 | (f) 802-828-3140

Subject: Records Management Plan: Transitory Records (Agency Wide)
Effective Date: January 1, 2013

Supersedes: None

PURPOSE

The purpose of this plan is to ensure that all Vermont Agency of Education (AOE) staff complies with applicable laws and regulations regarding the management and disposition of transitory records.

AUTHORITY

"A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the state archivist pursuant to 3 V.S.A. § 117(a)(5)." 1 V.S.A. §317a.

GENERAL REQUIREMENTS

AOE staff takes all reasonable precautions to keep records authentic and reliable. Staff ensures that records are safe from alteration, damage and theft by implementing program best practices and Vermont State records management standards. All records must be retained in the legal custody of the AOE until retention requirements established by the Vermont State Archives and Records Administration (VSARA) record schedules have been met.

RECORD RETENTION REQUIREMENTS

On February 21, 2013 Leah Korce, AOE Records Officer, notified VSARA of the AOE intent to adopt an agency wide Transitory Records General Records Schedule (GRS).

On March 11, 2013, the AOE Records Officer evaluated the GRS: Transitory Records to ensure that it could effectively be carried out by all AOE staff. As a result of this review, the following GRS has been adopted by the AOE: GRS-1000.1000 Transitory Records.

COMPLIANCE

AOE staff, under direction of the AOE Division Records Liaisons and the AOE Records Officer, shall not destroy any transitory records created or received in the course of business unless destruction has been authorized through the Transitory Records schedule.

Schedule No.	Record Type	Retention and Disposition
GRS-1000.1000	AOE Transitory Records	Please see details outlined below with examples provided.

Transitory Records are only needed for a limited period of time in order to complete a routine action or prepare or update a formal or on-going record. They are not subject to any specific legal recordkeeping requirements, explicit or implied, and are administratively obsolete after the specific action or process to which they relate is complete.

The following types of transitory records can and should be destroyed when no longer needed provided that the records are not subject to any AOE adopted Record Series (RS) and Disposition Order (DO), GRS, or Agency-Specific Record Schedule (SRS), legal requirements or a legal retention hold:

Drafts

Preliminary or tentative versions of a document that have no additional value to the drafter or AOE. Includes drafts that have been superseded by another document.

E-mail

Examples of transitory e-mail records that can and should be destroyed from your inbox or sent mail folder(s) when no longer needed administratively are: (1) inter-agency correspondence and notes concerning routine processes and workflows, including simple requests for information; (2) out-of-office or meeting notifications; and (3) updates and other messages received for informational or reference purposes only.

Notes

Notes that have been taken to aid personal memory or for later review. Includes short, informal notes such as phone messages.

Publications and Reference Sources

Information that is intended primarily for consultation and is for reference or informational purposes only.

Routine Correspondence

Incoming and outgoing correspondence that is part of a regular routine function and has limited value or need after a routine action is completed.

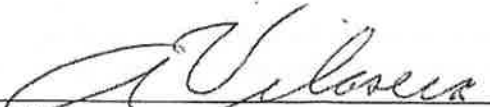
Routine Requests

Routine Requests and responses for forms, publications, and other readily available AOE information that do not require processing as a Public Records Request (PRR) or further action after the information is provided.

Worksheets

Forms, checklists, and similar worksheets used to prepare or update other records or informally track a workflow.

Destruction of these records depends on the type of record (i.e. paper or electronic). **Sensitive paper records *must* be shredded.** AOE Records Liaisons may make arrangements for mass shredding projects.


Approved: Armando Vilaseca, Secretary of Education

3-28-13
Date



Exhibit U

Jay Diaz

From: Jay Diaz <jdiaz@acluvt.org>
Sent: Tuesday, May 24, 2016 5:04 PM
To: 'Glennon, Greg'
Subject: RE: Reply to request for additional information

Greg:

Thanks for your responses.

After reviewing your responses again, I still have a few questions on behalf of Lola Duffort.

In your last email, you said that the data sent by each school/district in FTP extract files are “imported into and retained within the state-level database.” Does the AOE have the ability, through sorting, searching, or querying the state-level database to find out the number of bullying (or whatever) incidents for a given public school or district in a given school year? If so, please describe that process.

If not, and this could be done through some other process, please describe that process.

Thank you.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

From: Glennon, Greg [mailto:Greg.Glennon@vermont.gov]
Sent: Tuesday, May 03, 2016 1:23 PM
To: 'jdiaz@acluvt.org'
Subject: RE: Reply to request for additional information

Jay, the data extract files sent via secure FTP by the schools/districts to the AOE are transitory records. As previously described, the data contained within these files are imported into and retained within the AOE state-level database. Therefore, once they have been processed, the extract files themselves are administratively

Exhibit V

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Tuesday, May 31, 2016 10:52 AM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information

Jay,

All information is pulled into the state-level database for the purposes of running the state-level report. The state-level database does not include pre-built district- or school-level reports. Since the CIRS software sent out to each school/district includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports in the state-level database.

While the granular incident data persist in the state-level database, they reside in separate database tables. There are no sorting or searching capabilities that would enable the creation of school-level reports. As we have previously explained, in order for school- or district-level reports to be generated from the state-level database, it would require AOE staff to develop/create new queries and reports.

We recommend that requestors contact schools directly for this information as they are the custodians of these school level reports.

Thanks,

Greg

From: Jay Diaz [mailto:jdiaz@aclvt.org]
Sent: Tuesday, May 24, 2016 5:04 PM
To: Glennon, Greg
Subject: RE: Reply to request for additional information

Greg:

Thanks for your responses.

After reviewing your responses again, I still have a few questions on behalf of Lola Duffort.

In your last email, you said that the data sent by each school/district in FTP extract files are "imported into and retained within the state-level database." Does the AOE have the ability, through sorting, searching, or querying the state-level database to find out the number of bullying (or whatever) incidents for a given public school or district in a given school year? If so, please describe that process.

If not, and this could be done through some other process, please describe that process.

Thank you.

Sincerely,

Jay

Exhibit W

Jay Diaz

From: Jay Diaz <jdiaz@aclvt.org>
Sent: Wednesday, June 08, 2016 2:21 PM
To: 'Glennon, Greg'
Subject: RE: Reply to request for additional information

Greg:

Based on your responses, it is very difficult to understand whether the Agency has internal access to bullying data for each of Vermont's public schools.

We are trying to determine whether the AOE has the records that Ms. Duffort seeks, and it is the AOE's affirmative duty to assist us in making that determination.

The records she seeks would be any records showing the number of bullying incidents or complaints for a particular public school and/or the number of verified bullying incidents or complaints for a particular public school.

Does the AOE have such records?

Having an example data table would make it much easier to understand what the AOE has in its possession and what it does not. Please send me one of the database tables of granular data you discussed below so I can better understand what we are talking about.

Thank you.

Sincerely,

Jay

From: Glennon, Greg [mailto:Greg.Glennon@vermont.gov]
Sent: Tuesday, May 31, 2016 10:52 AM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information

Jay,

All information is pulled into the state-level database for the purposes of running the state-level report. The state-level database does not include pre-built district- or school-level reports. Since the CIRS software sent out to each school/district includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports in the state-level database.

While the granular incident data persist in the state-level database, they reside in separate database tables. There are no sorting or searching capabilities that would enable the creation of school-level reports. As we have previously explained, in order for school- or district-level reports to be generated from the state-level database, it would require AOE staff to develop/create new queries and reports.

We recommend that requestors contact schools directly for this information as they are the custodians of these school level reports.

Exhibit X



June 15, 2016

James M. Diaz, Esq.
Staff Attorney / Public
Advocate
T/802.223.6304
jdiaz@aclvt.org

VIA ELECTRONIC MAIL

Custodian of Record
C/O Greg Glennon, Esq.
General Counsel, Vermont Agency of Education

**Re: Public Record Request pursuant to 1 V.S.A. 315 *et. seq.*,
on behalf of Lola Duffort**

Board of Directors

James Morse, president
Julie Kalish, vice president
Pamela Marsh, secretary
Bernie Lambek, treasurer
Robert Appel
Peter Asch
Denise Bailey
Euan Bear
Traci Griffith
Ana Hernandez
Geoffrey Jones
Brad Myerson
David Putter
Tony Pyle
Richard Saudek
Bill Sayre
Bill Schubart
Abe Sender

Mr. Glennon:

I write on behalf of Lola Duffort, a reporter for the Rutland Herald. Since January, Ms. Duffort has sent numerous public record requests to the Agency of Education (AOE) for bullying incident data. Specifically, she has requested data records showing the number of bullying complaints/incidents and the number of verified bullying complaints/incidents at each public school in Vermont. She properly appealed all denials and was further denied access to the requested records by the Secretary of Education.

You and other AOE officials have confirmed that the AOE has these data records in its possession. On May 31, 2016, in response to my question about whether the AOE possesses records showing the number of bullying incidents for each Vermont public school, you wrote that "the [school-level] granular incident data persist...in separate database tables." I sent an email on June 8th attempting to clarify your statement, but have not received a response. In previous correspondence, you also wrote that school-level data is imported and retained in AOE databases after being uploaded by individual schools. On February 9, 2016, Judy Cutler, AOE's official record custodian, responded to Ms. Duffort's original request, explaining that district- or school-level incident data was within the AOE's possession and could be used to create a district- or school-level report of bullying data.

Nevertheless, the Secretary of Education refused to provide relevant records or the information sought because it would, according to AOE denials, require the creation of a new record. The Secretary has further justified the denial of Ms. Duffort's requests on the basis that some data cannot be disclosed due to privacy concerns.

We are unaware of any legal authority permitting the AOE to refuse to compile records containing the information sought, or to extract and compile pieces of information from discrete records in its possession. As described *infra*, relevant caselaw interpreting FOIA's open records provisions requires the extraction and compiling of data available in separate agency records. The D.C. Circuit has viewed the disclosure of information through compilations as required and routine, and *not* equivalent to the creation of a new record. Furthermore, as discussed *infra*, Vermont caselaw and the PRA prohibit an agency from refusing to disclose a record in its entirety because some portion is exempt from disclosure. Therefore, Ms. Duffort makes a new request to inspect or receive copies of AOE data records. In the interest of resolving our dispute without litigation, we are providing legal analysis with our request. If Ms. Duffort's request and appeal are again denied, we will have no choice but to file a public records suit in superior court.

Ms. Duffort's request is as follows:

1. Please supply copies of records, including but not limited to records in the Combined Incident Reporting Survey (CIRS) database, showing the number of bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015.
2. Please supply copies of records, including but not limited to records in the CIRS database, showing the number of verified bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015.

If it is the least costly method of disclosure, Ms. Duffort asks that the underlying data described *supra* be extracted and compiled in response to her request. In the AOE's response to this request, please supply a cost estimate for extracting and compiling the requested information, as well as a cost estimate for any other method the AOE would prefer to use.

The Vermont Access to Public Records Act

The Vermont Access to Public Records Act (PRA) was enacted "to provide for free and open examination of records" consistent with the Vermont Constitution. 1 V.S.A. § 315(a).

The PRA provides any person the right to inspect or copy any public record of a public agency. *Id.* at § 316(a). A "public record" is defined as "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business." *Id.* at § 317(b). Public agencies must "promptly produce the record" at issue for viewing or copying, *id.* at § 318(a), and are permitted to extend their response time where "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records" present an unusual delay. *Id.* at § 318(a)(5)(A), (B).

While the PRA includes many exemptions and exceptions, they are construed "strictly against the custodians of the records and any doubts should be resolved in favor of disclosure." *Finberg v. Murnane*, 159 Vt. 431, 434 (1992) (internal quotations omitted). Furthermore, the PRA is

construed liberally and agencies preventing disclosure of public records have the burden of proof in sustaining their actions. 1 V.S.A. § 315(a).

Public agencies “may, but [are] not required to ... create a public record.” *Id.* at § 316(i). The Vermont Supreme Court has not defined what it means to “create a public record” under the PRA. However, federal courts consider it “well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.” *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982)(citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161–62 (1975)). To request the creation of a new record is to seek information not already available in the records possessed by the agency. *See Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 451-52 (D.D.C. 2014), *aff’d sub nom. Tereshchuk v. Bureau of Prisons, Dir.*, No. 14-5278, 2015 WL 4072055 (D.C. Cir. June 29, 2015). Hence, in *Tereshchuk v. Bureau of Prisons*, the court denied a federal prisoner’s FOIA request for more detailed records than what were in the Bureau’s possession because the Bureau had no duty to create more detailed records under FOIA. *Id.* Because “BOP provided the indexes as they are maintained by the agency ... [the prisoner] got all parts of the indexes to which he has a legal right.” *Id.* at 452.

Contrastingly, Ms. Duffort is not requesting that a new or more detailed record be created. She is asking for either 1) copies of the records containing the information she seeks, or 2) a compilation of the information she seeks. Neither request is for the creation of a new record because the requested information is within records possessed by the AOE. *See Sawyer v. Spaulding*, 184 Vt. 545 (2008). The purpose of the PRA is to allow individuals, like Ms. Duffort, to request copies of public records that contain the information sought when that information is already in agency records. *See id.* Therefore, she is not asking for the creation of a new record.

Responding to a PRA Request with a Compilation of Information from Discrete Records Is Not the Creation of a New Record

Ms. Duffort previously requested that the AOE extract and compile the information she seeks from available AOE records. The Secretary refused to produce such a compilation, claiming that this would require the AOE to “create a new record.” However, the D.C. Circuit has made clear that “extracting and compiling [] data does *not* amount to the creation of a new record.” *Schladetsch v. U.S. Dept of H.U.D.*, No. 99-0175, 2000 WL 33372125, at *3 (D.D.C. Apr. 4, 2000)(interpreting provisions of the federal Freedom of Information Act (FOIA))(emphasis added).

In *Schladetsch v. U.S. Dept. of H.U.D.*, a federal agency conceded possession in its electronic databases of all the discrete pieces of information sought by a requester. *Id.* at *2. The Department of H.U.D. denied access to the requested compilation because it did not possess the information in the isolated compilation sought by the requestor. *Id.* But the court granted the plaintiff’s request for a compilation because “[t]he fact that the agency may have to search numerous records to comply with the request and that the net result of complying with the request will be a document the agency did not previously possess is not unusual in FOIA cases, nor does this preclude the applicability of the Act.” *Id.* at *3 (citing *Disabled Officer’s Assn. v. Rumsfeld*, 428 F.Supp. 454, 456 (D.D.C. 1977), *aff’d*, 574 F.2d 636 (D.C. Cir. 1978)).

In Ms. Duffort's case, the AOE has said that the requested data are in its electronic databases. Nevertheless, similar to the defendant in *Schladetsch*, AOE has refused to compile the requested data because it believes this would require the creation of a new record. But, a Vermont court is likely to require a compilation of information from internal records to be produced for the same reasons as in *Schladetsch* – regardless of the format, to extract and compile data from various internally accessible records does not amount to the creation of a new record. *See Schladetsch*, 2000 WL 33372125 at *3.

Moreover, the creation of a new record is likely be defined more broadly than the mere compiling of information from discrete records. Exceptions to disclosure are construed “strictly against the custodians of records,” and any doubts are resolved in favor of disclosure. *Bain v. Windham Cnty. Sheriff*, 191 Vt. 190 (2012). Given D.C. Circuit precedent, there is little doubt that the requested compilation is not a “new record,” and, regardless, any doubt will be resolved in favor of disclosure. Since relevant law requires the creation of a compilation of information contained in public records, and there is no certainty that a compilation of existing information is equivalent to the creation of a new record, the AOE should agree to extract and compile the requested data.

The Requested Records Must Be Produced Even if Portions Will Be Redacted

All recorded or acquired information in possession of a public agency must be disclosed to a requester unless a specific exception to the PRA can be applied. *See Trombley v. Bellows Falls Union High Sch. Dist. No. 27*, 160 Vt. 101, 107 (1993); 1 V.S.A. § 319(a). When read together, sections 317(b) and 319(a) of the PRA mean that public agencies may not refuse to disclose entire physical or electronic records on the basis that some portion of the record may be exempted from the PRA. Instead the agency is required to release the record with any exempt portions redacted, provided that it can meet the legal requirements of showing that the redacted information falls within an exception to the PRA.

The Vermont Supreme Court's application of section 317(b) has preserved the PRA's explicit policy of providing for the maximal “free and open examination of records” by ensuring that exempted portions of a particular record do not prevent the disclosure of an entire record. *See Herald Association, Inc. v. Dean*, 174 Vt. 350 (2002); *Norman v. Vt. Office of Court Adm'r*, 176 Vt. 593 (2004). In *Herald Association* and *Norman*, the Court determined that entire records could not be withheld, even though portions of them fit within PRA exemptions. The court favored “redaction as an alternative to nondisclosure,” ordering the government to provide redacted versions of the requested records. *Norman*, 176 Vt. at 595.

Thus far, the AOE's responses to previous requests suggest that it would be unwilling to disclose non-exempt information from the requested records because much of the information would require redaction. The PRA and the courts have suggested that the amount of redaction required is of no consequence when some portion of the record is disclosable – disclosable information must be disclosed. *See Norman*, 176 Vt. at 595. Ms. Duffort requests that disclosable information from relevant records be provided pursuant to her request and not withheld entirely because some portion of a record is deemed exempt.

Conclusion

Because the requested information is contained with AOE records, the records or a compilation of the extracted information must be disclosed. Ms. Duffort requests that the AOE use the most efficient and least costly method of disclosure. As stated *supra*, she prefers a compilation.

Ms. Duffort requests that the AOE respond to this public records request, as required by 1 V.S.A. 318(a)(2), within three business days of receipt of this request. If you believe that Ms. Duffort is not entitled to some of these records, you are required to inform me of your decision within three business days, listing each record or portion of a record withheld and the specific exemption that you believe applies to each. *Id.* § 318(a)(2). If you are unable to locate any records responsive to this request, you must certify that in writing. *Id.* § 318(a)(4).

If “unusual circumstances” exist, the AOE is permitted to extend the production time limit, by written notice to me within three business days, for no more than ten business days from receipt of the request. *Id.* at 318(a)(5). The AOE may also contact me to discuss a potential timeline for disclosure if the AOE is unable to meet the timeline prescribed in the PRA.

If an otherwise public record has a portion that is exempt from disclosure, you should redact the exempt portion and release a copy of the rest of the record together with a notation identifying the specific exemption that you believe applies to the portion withheld. *Id.* § 318(e); *Herald Ass’n v. Dean*, 174 Vt. 350, 358-359 (2002).

If some or all of the request is denied, please notify me of the title and name of the person responsible for the denial, and please inform me of the available appeal procedures, including the name of the person to whom appeal may be made.

Any response or correspondence regarding this request may be sent to me at jdiaz@acluvt.org or the mailing address below.

If Ms. Duffort’s request is again denied initially and upon appeal, she will have no choice but to seek relief in superior court. If we do not hear from you by close of business on June 21, 2016, we will construe your silence as a denial of this request. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Diaz", with a stylized flourish extending from the end.

Jay Diaz
Staff Attorney / Public Advocate

American Civil Liberties Union Foundation
of Vermont
137 Elm St
Montpelier, VT 05602

Exhibit Y

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Thursday, June 16, 2016 11:04 AM
To: Jay Diaz (jdiaz@aclvt.org)
Subject: RE: Public Record Request obo Lola Duffort

Follow Up Flag: Follow up
Flag Status: Flagged

Jay, your records request would require the creation of new records that do not currently exist. We decline to create these records.

Also, here is a resource tool from US ED/OCR that may be helpful (at this link):

http://ocrdata.ed.gov/flex/Reports.aspx?type=school#/action=addSearchParams&ddlSearchState=VT&btnSearchParams=Search&cblYears_4=1

Thanks,

Greg

Greg Glennon
Agency of Education
General Counsel

From: Jay Diaz [<mailto:jdiaz@aclvt.org>]
Sent: Wednesday, June 15, 2016 2:48 PM
To: Glennon, Greg
Cc: Cutler, Judy; Holcombe, Rebecca
Subject: Public Record Request obo Lola Duffort

Greg:

Please see the attached public record request on behalf of Lola Duffort.

We look forward to your response and hope to resolve our dispute.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304

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Like to donate? Do it now!

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Exhibit Z

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Wednesday, June 22, 2016 7:54 PM
To: Jay Diaz
Subject: Fwd: Public Record Request obo Lola Duffort

Jay, you may appeal this determination to Secretary Holcombe.

Thanks,

Greg Glennon

From: "Glennon, Greg" <Greg.Glennon@vermont.gov>
Date: June 16, 2016 at 11:03:30 AM EDT
To: "Jay Diaz (jdiaz@acluvt.org)" <jdiaz@acluvt.org>
Subject: RE: Public Record Request obo Lola Duffort

Jay, your records request would require the creation of new records that do not currently exist. We decline to create these records.

Also, here is a resource tool from US ED/OCR that may be helpful (at this link):

http://ocrdata.ed.gov/flex/Reports.aspx?type=school#/action=addSearchParams&ddlSearchState=VT&btnSearchParams=Search&cblYears_4=1

Thanks,

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Agency of Education
General Counsel

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To: Glennon, Greg
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Sincerely,

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Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

Exhibit AA



June 22, 2016

James M. Diaz, Esq.
Staff Attorney / Public
Advocate
T/802.223.6304
jdiaz@acluvt.org

VIA CERTIFIED MAIL

Rebecca Holcombe, Secretary of Education
Vermont Agency of Education
219 North Main Street, Suite 402
Barre, Vermont 05641

Re: Appeal of Public Record Request Denial pursuant to 1 V.S.A. § 315 *et seq.*, on behalf of Lola Duffort

Board of Directors

James Morse, president
Julie Kalish, vice president
Pamela Marsh, secretary
Bernie Lambek, treasurer
Robert Appel
Peter Asch
Denise Bailey
Euan Bear
Traci Griffith
Ana Hernandez
Geoffrey Jones
Brad Myerson
David Putter
Tony Pyle
Richard Saudek
Bill Sayre
Bill Schubart
Abe Sender

Secretary Holcombe:

I write on behalf of Lola Duffort, a reporter for the Rutland Herald. Since January, Ms. Duffort has sent numerous public record requests to the Agency of Education (AOE) for bullying incident data. Specifically, she has requested data records showing the number of bullying complaints/incidents and the number of verified bullying complaints/incidents at each public school in Vermont. She properly appealed all denials and her appeals were denied.

Accordingly, the ACLU of Vermont, on Ms. Duffort's behalf, submitted a public records request to the Agency of Education on June 15, 2016.¹ The request seeks data records showing 1) the number of bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015, and 2) the number of verified bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015. The request was accompanied by a review of the facts and a legal analysis demonstrating the appropriateness of our request.

Shortly after receiving our request, Greg Glennon, AOE's General Counsel, denied it.² This letter constitutes Ms. Duffort's appeal of that denial, pursuant to 1 V.S.A. § 318(c)(1).

¹ Letter from Jay Diaz, ACLU of Vermont, to AOE Custodian of Records, C/O Greg Glennon, AOE General Counsel. (Jun. 15, 2016)(enclosed)

² Email from Greg Glennon, AOE General Counsel, to Jay Diaz, ACLU of Vermont (Jun. 16, 2016)(enclosed)(hereinafter "AOE Response")

Requests for Data Records of Bullying, Hazing, and Harassment Complaints

Ms. Duffort's request seeks data records showing "the number of bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015" and "the number of verified bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015." This request represents a modified version of previous requests made to the AOE. As a means of assisting the AOE with responding to this request, we suggested that Ms. Duffort could be permitted to inspect the database tables, provided copies of database tables, or provided a compilation of the requested data.

AOE officials have confirmed that the AOE has these data in its records. On May 31, 2016, in response to my question about whether the AOE possesses records showing the number of bullying incidents for each Vermont public school, Greg Glennon, AOE General Counsel, wrote that "the [school-level] granular incident data persist...in separate database tables."³ In previous correspondence, Mr. Glennon also wrote that school-level data is imported and retained in AOE databases after being uploaded by individual schools.⁴ On February 9, 2016, Judith Cutler, AOE's official record custodian, responded to Ms. Duffort's original request, explaining that district- or school-level incident data was within the AOE's possession and could be used to create a district- or school-level report of bullying data.⁵ I sent an email on June 8th attempting to clarify these statements, but have not yet received a response.⁶

To support Ms. Duffort's most recent request, we provided thorough legal analysis showing that the compiling of the requested data would not constitute the creation of a new record. Rather than identifying individual records that are responsive to Ms. Duffort's request or responding to our legal analysis, however, Mr. Glennon denied her request in totality on the basis that the request "would require the creation of new records that do not currently exist."⁷ In denying Ms. Duffort's request, the AOE has taken the confounding position that it has the requested data in its electronic databases, but refuses to search for it or produce it in any form.

We are unaware of any legal authority permitting the AOE to refuse to provide records containing the information sought, or to extract and compile pieces of information from discrete records in its possession in response to Ms. Duffort's request. Moreover, Vermont state agencies are required to "consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request." 1 V.S.A. § 318(d). However, in what appears to be a method of obfuscation and delay, the AOE has abjectly refused to provide us with clear answers to questions about the data we seek or respond to the legal analysis supporting Ms. Duffort's request. It must also be remembered that

³ Email exchange between Greg Glennon, AOE General Counsel, and Jay Diaz, ACLU of Vermont (enclosed)

⁴ Email from Greg Glennon, AOE General Counsel, to Jay Diaz, ACLU of Vermont (May 3, 2016)(enclosed)

⁵ Email exchange between Judy Cutler, AOE Investigator / Public Records Officer, and Lola Duffort, Appellant (enclosed)

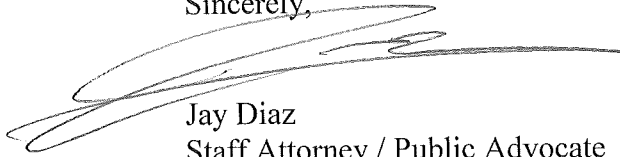
⁶ Email from Jay Diaz, ACLU of Vermont, to Greg Glennon, AOE General Counsel (June 8, 2016)(enclosed)

⁷ See AOE Response

the AOE is required to collect and report school-by-school bullying, hazing, and harassment data under 16 V.S.A. § 164(17). It seems to us that the AOE's denial of Ms. Duffort's request does violence to Vermonters', and most notably to the Vermont press's, basic expectations of open government, and is plainly untenable as a matter of law.

Ms. Duffort and the ACLU of Vermont remain hopeful that the AOE will reverse its denial of her request and coordinate with us to provide the data. We respectfully ask that you reverse Mr. Glennon's denial and provide Ms. Duffort with the requested records. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Diaz", with a long horizontal flourish extending to the right.

Jay Diaz
Staff Attorney / Public Advocate

American Civil Liberties Union Foundation
of Vermont
137 Elm St
Montpelier, VT 05602

Enclosures

Cc: Greg Glennon, AOE General Counsel



June 15, 2016

James M. Diaz, Esq.
Staff Attorney / Public
Advocate
T/802.223.6304
jdiaz@acluvt.org

VIA ELECTRONIC MAIL

Custodian of Record
C/O Greg Glennon, Esq.
General Counsel, Vermont Agency of Education

**Re: Public Record Request pursuant to 1 V.S.A. 315 *et. seq.*,
on behalf of Lola Duffort**

Board of Directors

James Morse, *president*
Julie Kalish, *vice president*
Pamela Marsh, *secretary*
Bernie Lambek, *treasurer*
Robert Appel
Peter Asch
Denise Bailey
Euan Bear
Traci Griffith
Ana Hernandez
Geoffrey Jones
Brad Myerson
David Putter
Tony Pyle
Richard Saudek
Bill Sayre
Bill Schubart
Abe Sender

Mr. Glennon:

I write on behalf of Lola Duffort, a reporter for the Rutland Herald. Since January, Ms. Duffort has sent numerous public record requests to the Agency of Education (AOE) for bullying incident data. Specifically, she has requested data records showing the number of bullying complaints/incidents and the number of verified bullying complaints/incidents at each public school in Vermont. She properly appealed all denials and was further denied access to the requested records by the Secretary of Education.

You and other AOE officials have confirmed that the AOE has these data records in its possession. On May 31, 2016, in response to my question about whether the AOE possesses records showing the number of bullying incidents for each Vermont public school, you wrote that "the [school-level] granular incident data persist...in separate database tables." I sent an email on June 8th attempting to clarify your statement, but have not received a response. In previous correspondence, you also wrote that school-level data is imported and retained in AOE databases after being uploaded by individual schools. On February 9, 2016, Judy Cutler, AOE's official record custodian, responded to Ms. Duffort's original request, explaining that district- or school-level incident data was within the AOE's possession and could be used to create a district- or school-level report of bullying data.

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Ms. Duffort's request is as follows:

1. Please supply copies of records, including but not limited to records in the Combined Incident Reporting Survey (CIRS) database, showing the number of bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015.
2. Please supply copies of records, including but not limited to records in the CIRS database, showing the number of verified bullying, hazing, and harassment complaints/incidents in each of Vermont's public schools that occurred during the school years of 2012-2013, 2013-2014, and 2014-2015.

If it is the least costly method of disclosure, Ms. Duffort asks that the underlying data described *supra* be extracted and compiled in response to her request. In the AOE's response to this request, please supply a cost estimate for extracting and compiling the requested information, as well as a cost estimate for any other method the AOE would prefer to use.

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Contrastingly, Ms. Duffort is not requesting that a new or more detailed record be created. She is asking for either 1) copies of the records containing the information she seeks, or 2) a compilation of the information she seeks. Neither request is for the creation of a new record because the requested information is within records possessed by the AOE. *See Sawyer v. Spaulding*, 184 Vt. 545 (2008). The purpose of the PRA is to allow individuals, like Ms. Duffort, to request copies of public records that contain the information sought when that information is already in agency records. *See id.* Therefore, she is not asking for the creation of a new record.

Responding to a PRA Request with a Compilation of Information from Discrete Records Is Not the Creation of a New Record

Ms. Duffort previously requested that the AOE extract and compile the information she seeks from available AOE records. The Secretary refused to produce such a compilation, claiming that this would require the AOE to “create a new record.” However, the D.C. Circuit has made clear that “extracting and compiling [] data does *not* amount to the creation of a new record.” *Schladetsch v. U.S. Dept of H.U.D.*, No. 99-0175, 2000 WL 33372125, at *3 (D.D.C. Apr. 4, 2000)(interpreting provisions of the federal Freedom of Information Act (FOIA))(emphasis added).

In *Schladetsch v. U.S. Dept. of H.U.D.*, a federal agency conceded possession in its electronic databases of all the discrete pieces of information sought by a requester. *Id.* at *2. The Department of H.U.D. denied access to the requested compilation because it did not possess the information in the isolated compilation sought by the requestor. *Id.* But the court granted the plaintiff’s request for a compilation because “[t]he fact that the agency may have to search numerous records to comply with the request and that the net result of complying with the request will be a document the agency did not previously possess is not unusual in FOIA cases, nor does this preclude the applicability of the Act.” *Id.* at *3 (citing *Disabled Officer’s Assn. v. Rumsfeld*, 428 F.Supp. 454, 456 (D.D.C. 1977), *aff’d*, 574 F.2d 636 (D.C. Cir. 1978).

In Ms. Duffort's case, the AOE has said that the requested data are in its electronic databases. Nevertheless, similar to the defendant in *Schladetsch*, AOE has refused to compile the requested data because it believes this would require the creation of a new record. But, a Vermont court is likely to require a compilation of information from internal records to be produced for the same reasons as in *Schladetsch* – regardless of the format, to extract and compile data from various internally accessible records does not amount to the creation of a new record. *See Schladetsch*, 2000 WL 33372125 at *3.

Moreover, the creation of a new record is likely to be defined more broadly than the mere compiling of information from discrete records. Exceptions to disclosure are construed "strictly against the custodians of records," and any doubts are resolved in favor of disclosure. *Bain v. Windham Cnty. Sheriff*, 191 Vt. 190 (2012). Given D.C. Circuit precedent, there is little doubt that the requested compilation is not a "new record," and, regardless, any doubt will be resolved in favor of disclosure. Since relevant law requires the creation of a compilation of information contained in public records, and there is no certainty that a compilation of existing information is equivalent to the creation of a new record, the AOE should agree to extract and compile the requested data.

The Requested Records Must Be Produced Even if Portions Will Be Redacted

All recorded or acquired information in possession of a public agency must be disclosed to a requester unless a specific exception to the PRA can be applied. *See Trombley v. Bellows Falls Union High Sch. Dist. No. 27*, 160 Vt. 101, 107 (1993); 1 V.S.A. § 319(a). When read together, sections 317(b) and 319(a) of the PRA mean that public agencies may not refuse to disclose entire physical or electronic records on the basis that some portion of the record may be exempted from the PRA. Instead the agency is required to release the record with any exempt portions redacted, provided that it can meet the legal requirements of showing that the redacted information falls within an exception to the PRA.

The Vermont Supreme Court's application of section 317(b) has preserved the PRA's explicit policy of providing for the maximal "free and open examination of records" by ensuring that exempted portions of a particular record do not prevent the disclosure of an entire record. *See Herald Association, Inc. v. Dean*, 174 Vt. 350 (2002); *Norman v. Vt. Office of Court Adm'r*, 176 Vt. 593 (2004). In *Herald Association* and *Norman*, the Court determined that entire records could not be withheld, even though portions of them fit within PRA exemptions. The court favored "redaction as an alternative to nondisclosure," ordering the government to provide redacted versions of the requested records. *Norman*, 176 Vt. at 595.

Thus far, the AOE's responses to previous requests suggest that it would be unwilling to disclose non-exempt information from the requested records because much of the information would require redaction. The PRA and the courts have suggested that the amount of redaction required is of no consequence when some portion of the record is disclosable – disclosable information must be disclosed. *See Norman*, 176 Vt. at 595. Ms. Duffort requests that disclosable information from relevant records be provided pursuant to her request and not withheld entirely because some portion of a record is deemed exempt.

Conclusion

Because the requested information is contained with AOE records, the records or a compilation of the extracted information must be disclosed. Ms. Duffort requests that the AOE use the most efficient and least costly method of disclosure. As stated *supra*, she prefers a compilation.

Ms. Duffort requests that the AOE respond to this public records request, as required by 1 V.S.A. 318(a)(2), within three business days of receipt of this request. If you believe that Ms. Duffort is not entitled to some of these records, you are required to inform me of your decision within three business days, listing each record or portion of a record withheld and the specific exemption that you believe applies to each. *Id.* § 318(a)(2). If you are unable to locate any records responsive to this request, you must certify that in writing. *Id.* § 318(a)(4).

If “unusual circumstances” exist, the AOE is permitted to extend the production time limit, by written notice to me within three business days, for no more than ten business days from receipt of the request. *Id.* at 318(a)(5). The AOE may also contact me to discuss a potential timeline for disclosure if the AOE is unable to meet the timeline prescribed in the PRA.


If an otherwise public record has a portion that is exempt from disclosure, you should redact the exempt portion and release a copy of the rest of the record together with a notation identifying the specific exemption that you believe applies to the portion withheld. *Id.* § 318(e); *Herald Ass’n v. Dean*, 174 Vt. 350, 358-359 (2002).

If some or all of the request is denied, please notify me of the title and name of the person responsible for the denial, and please inform me of the available appeal procedures, including the name of the person to whom appeal may be made.

Any response or correspondence regarding this request may be sent to me at jdiaz@acluvt.org or the mailing address below.

If Ms. Duffort’s request is again denied initially and upon appeal, she will have no choice but to seek relief in superior court. If we do not hear from you by close of business on June 21, 2016, we will construe your silence as a denial of this request. Thank you for your consideration.

Sincerely,



Jay Diaz
Staff Attorney / Public Advocate

American Civil Liberties Union Foundation
of Vermont
137 Elm St
Montpelier, VT 05602

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Thursday, June 16, 2016 11:04 AM
To: Jay Diaz (jdiaz@acluvt.org)
Subject: RE: Public Record Request obo Lola Duffort

Follow Up Flag: Follow up
Flag Status: Flagged

Jay, your records request would require the creation of new records that do not currently exist. We decline to create these records.

Also, here is a resource tool from US ED/OCR that may be helpful (at this link):

http://ocrdata.ed.gov/flex/Reports.aspx?type=school#/action=addSearchParams&ddlSearchState=VT&btnSearchParams=Search&cblYears_4=1

Thanks,

Greg

Greg Glennon
Agency of Education
General Counsel

From: Jay Diaz [mailto:jdiaz@acluvt.org]
Sent: Wednesday, June 15, 2016 2:48 PM
To: Glennon, Greg
Cc: Cutler, Judy; Holcombe, Rebecca
Subject: Public Record Request obo Lola Duffort

Greg:

Please see the attached public record request on behalf of Lola Duffort.

We look forward to your response and hope to resolve our dispute.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
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Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Tuesday, May 31, 2016 10:52 AM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information

Jay,

All information is pulled into the state-level database for the purposes of running the state-level report. The state-level database does not include pre-built district- or school-level reports. Since the CIRS software sent out to each school/district includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports in the state-level database.

While the granular incident data persist in the state-level database, they reside in separate database tables. There are no sorting or searching capabilities that would enable the creation of school-level reports. As we have previously explained, in order for school- or district-level reports to be generated from the state-level database, it would require AOE staff to develop/create new queries and reports.

We recommend that requestors contact schools directly for this information as they are the custodians of these school level reports.

Thanks,

Greg

From: Jay Diaz [mailto:jdiaz@aclvt.org]
Sent: Tuesday, May 24, 2016 5:04 PM
To: Glennon, Greg
Subject: RE: Reply to request for additional information

Greg:

Thanks for your responses.

After reviewing your responses again, I still have a few questions on behalf of Lola Duffort.

In your last email, you said that the data sent by each school/district in FTP extract files are "imported into and retained within the state-level database." Does the AOE have the ability, through sorting, searching, or querying the state-level database to find out the number of bullying (or whatever) incidents for a given public school or district in a given school year? If so, please describe that process.

If not, and this could be done through some other process, please describe that process.

Thank you.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

From: Glennon, Greg [mailto:Greg.Glennon@vermont.gov]
Sent: Tuesday, May 03, 2016 1:23 PM
To: 'jdiaz@acluvt.org'
Subject: RE: Reply to request for additional information

Jay, the data extract files sent via secure FTP by the schools/districts to the AOE are transitory records. As previously described, the data contained within these files are imported into and retained within the AOE state-level database. Therefore, once they have been processed, the extract files themselves are administratively obsolete. Specifically, the AOE's legal authority to delete these transitory records is provided for via its agency wide adoption of VSARA's Transitory Records General Records Schedule (GRS), Schedule No. GRS-1000.1000 (see attached).

Also (per your request) I am attaching AOE's signed, formal adoption of the General Record Schedules developed/maintained by VSARA. The General Record Schedules are posted on the VT Sec. of State's website at the following link and contain short summaries of the various schedules: <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx>.

Thanks,

Greg

From: Jay Diaz [mailto:jdiaz@acluvt.org]
Sent: Thursday, April 28, 2016 3:53 PM
To: Glennon, Greg
Subject: RE: Reply to request for additional information

Greg:

On behalf of Lola Duffort, I have a follow-up question to your response and a request.

In your response below, and in other responses I have received from you in this matter, you have said that the CIRS files sent from schools to the AOE are "cleared" or "purged" after their data are transmitted to the AOE state-level database. However, you have not provided me with the requested citation to the legal authority for the clearing or purging of these files. Please provide the authority. I have tried to find the authority myself by conducting my own research and contacting the Secretary of State's Office, but have not been successful in finding it.

Also, please provide me with the AOE's general record schedule and any policy documents or directives regarding the record schedule's implementation. If there are any other record schedules, disposition orders, or other policy documents relating to the AOE's retention of the aforementioned CIRS and/or bullying data, please send those to me as well.

I look forward to your response. Given that it's the end of the legislative session, I understand if this will be difficult to handle quickly. Can you respond by the end of next week? If that doesn't work, please let me know what would be a realistic deadline.

Thank you.

Sincerely,

Jay

James M. Diaz, Esq.
Staff Attorney / Public Advocate
ACLU of Vermont
137 Elm St.
Montpelier, VT 05602
802-223-6304
Not a member? Join at acluvt.org
Like to donate? Do it now!
Follow us @ acluvt.org | facebook.com/ACLU-Vermont | twitter.com/ACLU_VT

From: Glennon, Greg [<mailto:Greg.Glennon@vermont.gov>]
Sent: Monday, April 04, 2016 12:11 PM
To: Jay Diaz (jdiaz@acluvt.org)
Subject: Reply to request for additional information

Jay, here are the AOE's responses to your questions, as you requested in your email of 3/24/16.

Thanks,

Greg

ACLU Request #1: Please explain, step-by-step, the data collection process for bullying complaints/incidents and verified bullying incidents, starting from the individual school and ending with the AOE production of the statewide totals.

AOE Response: Each school year, the AOE prepares a blank Microsoft Access database that may be used by district personnel to gather incident data for the purposes of reporting required information to the AOE at the end of that year. These databases are templates that ensure that incident data that they are required to report (including but not limited to hazing, harassment, and bullying incidents) are entered using and including appropriate codesets, mandatory fields, and related information. This data collection is called CIRS (Combined Incident Reporting Survey/Software).

Schools/district personnel have their own local processes and systems to record incident data and many do not record incidents in these data collection templates until the end of the year when they refer to their own local systems/processes and transfer information between the two systems for the purposes of fulfilling reporting requirements to the AOE. Some schools/districts may opt to incorporate the same business rules/codesets/etc. in their local systems and may never have the need to utilize the data collection template that the AOE provides even though we recommend that all data are run through these templates to improve data quality. Regardless of whether or not schools/districts use the CIRS data collection templates provided by AOE, they ultimately use one of these aforementioned processes to ensure referential integrity – that is, appropriate association of information across database tables (e.g. an ‘action’ record is associated to valid ‘incident’ and ‘offender’ database record identifiers; each ‘incident’ has at least one corresponding ‘offender’/‘victim’ record; etc.) – prior to preparing extracted information to send to the AOE.

The AOE has set up a secure FTP (file transfer protocol) process that provides role- and organization-based access for school/district personnel to securely submit data to the AOE. The format of what is submitted is text (.txt) or comma separated variable (.csv) extracts of five separate tables that mirror the table structure of a AOE version of the data collection template into which these five files for each school will be imported. This FTP process was put in place last year as an effort to help reporting entities send this information in a secure electronic format versus having to burn these extracted data onto CDs and pay to physically mail them to the AOE. Since the FTP process is solely the process that allows these data to be transferred, and in order to maximize taxpayer dollars that pay for the server/storage space of these intermediary records, the FTP directories are set up for each reporting entity to transfer the data to the state-level AOE database and, once that year’s data have been successfully transmitted, are cleared prior to the next year’s collection period.

It should be noted that this describes the process the AOE uses to collect information that allows us to create state-level reports. The CIRS database templates that are provided for use by every school also include pre-built queries that allow school-level incident data to be reported, to the extent that schools determine the information public and non-confidential, at a school-by-school basis. It is for this reason that the AOE instructs requestors for this information to contact schools directly as they are custodians of this information.

ACLU Request #2: Please explain how the AOE aggregates a statewide total number of bullying complaints/incidents and verified bullying incidents.

AOE Response: Once these five extract files are received by the AOE, AOE personnel import these data into the state-level database via an established visual basic for Access (VBA) database process. These personnel then generate the state-level report on hazing, harassment, and bullying, taking care to suppress small cells prior to publication. This report is based off of a predefined query that allows the AOE to pull the same information related to these categories of incidents every year for as close to an apples-to-apples comparison over time as is possible.

ACLU Request #3: Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each school?

Response: The aforementioned CIRS database templates are provided with the expectation that incident data will be reported separately for each school. Some schools will populate and provide this information by themselves without coordination across the district/supervisory union and some districts will extract this same information from a district-wide system for each of their schools. Regardless of whether it is an individual school working alone or district personnel reporting for multiple schools, they are required to submit separate extract files for each school. As was mentioned previously, this data collection is designed to collect information regarding many types of incidents which includes but is not limited to hazing, harassment, and bullying. All incidents are reported together (i.e. bullying incidents are not reported separately from a weapons incident or from a vandalism incident or from a school conduct violation incident) in these extracted files.

ACLU Request #4: Does the AOE receive the number of bullying complaints/incidents and verified bullying incidents from each district/supervisory union?

Response: The aforementioned CIRS database templates are provided with the expectation that incident data will be reported separately for each school. Some schools will populate and provide this information by themselves without coordination across the district/supervisory union and some districts will extract this same information from a district-wide system for each of their schools. Regardless of whether it is an individual school working alone or district personnel reporting for multiple schools, they are required to submit separate extract files for each school. As was mentioned previously, this data collection is designed to collect information regarding many types of incidents which includes but is not limited to hazing, harassment, and bullying. All incidents are reported together (i.e. bullying incidents are not reported separately from a weapons incident or from a vandalism incident or from a school conduct violation incident) in these extracted files.

ACLU Request #5: Does the AOE at any time add up the individual incidents from each school, district, and/or supervisory union to determine the number of incidents at each school, district, and/or supervisory union?

Response: The AOE only runs the state-level report that has been built into the state-level database. Since the CIRS software includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports here.

ACLU Request #6: After the number of bullying complaints/incidents and verified bullying incidents is aggregated by school, district, and/or supervisory union, what does the AOE do with these counts/data?

Response: The AOE only runs the state-level report that has been built into the state-level database. The AOE does not aggregate this information at a school/district/supervisory union-level.

ACLU Request #7: Please explain how the AOE can aggregate a statewide total number of bullying complaints/incidents and verified bullying incidents without first knowing or aggregating the number of incidents by school, district, and/or supervisory union.

Response: The raw data reported to the AOE at the school-level is pulled into a state-level database where an established query aggregates all hazing, harassment, and bullying incidents for the state-level report. There is no need to aggregate at any level lower than that in order to create a state-level report.

ACLU Request #8: Please explain the State Board of Education's and AOE's lack of a report of school-by-school bullying complaints and responses to those complaints as required by 16 V.S.A. § 164(17).

Response: The AOE provides queries in the CIRS data collection templates that allows each school to report information at the school-level to the extent that they are permitted under FERPA. The AOE feels that this approach is the most responsive to this requirement because it provides this information to school personnel who may then disclose this information to the extent that it may be made public.

ACLU Request #9: If the AOE has not completed or published a school-by-school report of bullying incidents as required by 16 V.S.A. § 164(17) because it is concerned about violating FERPA protections, please explain why the AOE has not published a redacted version of the report and has refused to provide a redacted version of the report to Ms. Duffort as required by 1 V.S.A. § 318(e).

Response: The AOE provides queries in the CIRS data collection templates that allows each school to report information at the school-level to the extent that they are permitted under FERPA. The AOE feels that this approach is the most responsive to this requirement because it provides this information to school personnel who may then disclose this information to the extent that it may be made public. The AOE has instructed any and all requestors that seek school-level information to contact the schools directly as they are the custodians of

these records. The AOE declines to recreate reports that are already available at each school or to create new reports for this purpose, especially given the fact that this taxpayer funded exercise would result in reports that are fully redacted in most, if not all, cases.

ACLU Request #10: Please provide a date and time in the next week where I can speak to a knowledgeable AOE IT employee to discuss the data collection process for bullying incidents and confirm your responses to the questions in this letter.

Response: AOE processes are spelled out in detail in this response.

Jay Diaz

From: Glennon, Greg <Greg.Glennon@vermont.gov>
Sent: Tuesday, May 03, 2016 1:23 PM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information
Attachments: Records Management Plan_Transitory Records_AOE_Effective 01 01 13.pdf; General Records Schedule_04 21 11.pdf

Jay, the data extract files sent via secure FTP by the schools/districts to the AOE are transitory records. As previously described, the data contained within these files are imported into and retained within the AOE state-level database. Therefore, once they have been processed, the extract files themselves are administratively obsolete. Specifically, the AOE's legal authority to delete these transitory records is provided for via its agency wide adoption of VSARA's Transitory Records General Records Schedule (GRS), Schedule No. GRS-1000.1000 (see attached).

Also (per your request) I am attaching AOE's signed, formal adoption of the General Record Schedules developed/maintained by VSARA. The General Record Schedules are posted on the VT Sec. of State's website at the following link and contain short summaries of the various schedules: <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx>.

Thanks,

Greg

From: Jay Diaz [mailto:jdiaz@aclvt.org]
Sent: Thursday, April 28, 2016 3:53 PM
To: Glennon, Greg
Subject: RE: Reply to request for additional information

Greg:

On behalf of Lola Duffort, I have a follow-up question to your response and a request.

In your response below, and in other responses I have received from you in this matter, you have said that the CIRS files sent from schools to the AOE are "cleared" or "purged" after their data are transmitted to the AOE state-level database. However, you have not provided me with the requested citation to the legal authority for the clearing or purging of these files. Please provide the authority. I have tried to find the authority myself by conducting my own research and contacting the Secretary of State's Office, but have not been successful in finding it.

Also, please provide me with the AOE's general record schedule and any policy documents or directives regarding the record schedule's implementation. If there are any other record schedules, disposition orders, or other policy documents relating to the AOE's retention of the aforementioned CIRS and/or bullying data, please send those to me as well.

I look forward to your response. Given that it's the end of the legislative session, I understand if this will be difficult to handle quickly. Can you respond by the end of next week? If that doesn't work, please let me know what would be a realistic deadline.

Thank you.

3/14/2016

RE: Public records request: bullying data - Lola Duffort

RE: Public records request: bullying data

Wed 2/17/2016 2:03 PM

To: Lola Duffort <lola.duffort@rutlandherald.com>;

Hi Lola,

Please find attached the data regarding statewide bullying incidents as requested.

If you have any additional questions, please let me know.

Thank you,

--Judy

From: Lola Duffort [mailto:lola.duffort@rutlandherald.com]

Sent: Tuesday, February 16, 2016 5:22 PM

To: Cutler, Judy

Subject: Re: Public records request: bullying data

Hi Judy,

I've appealed the Agency's decision not to provide me with district-specific data with the Secretary. But since statewide data is readily available and has been offered, I would like to have it.

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>

Sent: Thursday, February 11, 2016 1:37 PM

To: Lola Duffort

Subject: RE: Public records request: bullying data

Hi Lola,

3/14/2016

RE: Public records request: bullying data - Lola Duffort

In answer to your question, it is possible, if not likely, that the raw data would be suppressed in many instances in this format. That is because any report showing less than 11 incidents in this context (for a school district), would not be information that the Agency is permitted to release under the student privacy law. We do not maintain this report, so that is an educated estimate on our part. And, as noted in my prior response, under the public records law we are not obligated (in the first instance) to create a record that does not exist.

I hope this provides some clarification as to why we are not able to provide the information in the way you requested.

Thank you ,
Judy

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]

Sent: Tuesday, February 09, 2016 4:17 PM

To: Cutler, Judy

Subject: Re: Public records request: bullying data

Hi Judy,

Perhaps I phrased my request badly -- I am only looking for the number of incidents of reported bullying and the number of incidents of verified bullying incidents, per school district, per school year. Surely the raw number of incidents (both reported and verified), would not in every case -- for every district, in every year -- be suppressed under FERPA? What is the minimum number of incidents required for the information to not be suppressed?

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>

Sent: Tuesday, February 9, 2016 3:02 PM

To: Lola Duffort

Subject: RE: Public records request: bullying data

Hi Lola,

Our data collection tool for this information pulls the district level data into a statewide pool. We could recreate the data at the district level, but any such report, for any school district in the state (largest to smallest), would result in every cell being suppressed and not reportable under the federal student privacy law (FERPA). Moreover, under Vermont law, we are not obligated to create a report which does not exist.

Thanks,

3/14/2016

RE: Public records request: bullying data - Lola Duffort

Judy

Judith Cutler

Investigator / Public Records Officer

Vermont Agency of Education

219 North Main Street, Suite 402

Barre, VT 05641

Desk: (802) 479-1760

Email: Judy.Cutler@vermont.gov

My email address has changed. It is now Judy.Cutler@vermont.gov. Please update your contact lists accordingly.

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]

Sent: Monday, February 08, 2016 4:46 PM

To: Cutler, Judy

Subject: Re: Public records request: bullying data

Hi Judy,

How can such records not exist when the Agency's own website says that this information is reported to the Agency? At this link, <http://education.vermont.gov/safe-schools/school-climate/publications>, under the Harassment, Hazing, and Bullying subhead, the Agency states that:

Bullying Incidents Data Gathering: school districts are required to collect data on the number of reported incidents of bullying and the number of incidents that have been verified and to make such data available to the Secretary of Education and to the public. This document provides clarifying information for using the Combined Incidence Reporting Software (CIRS) to collect bullying data.

If this information is collected from individual districts, how can only a statewide number be available?

Thanks,

Lola Duffort

Rutland Herald

Education reporter

802 774 3027 (office)

802 417 7486 (cell)

@LolaDuffort

From: Cutler, Judy <Judy.Cutler@vermont.gov>

Sent: Monday, February 8, 2016 4:34 PM

To: Lola Duffort

Subject: RE: Public records request: bullying data

Good afternoon Ms. Duffort,

We are unable to provide any responsive documents to your request for reported bullying incidents and the number of verified bullying incidents disaggregated by school district and by school year. Therefore, I can and do certify

3/14/2016

RE: Public records request: bullying data - Lola Duffort

pursuant to 1 V.S.A. § 318(a)(4) that no such record exists at this Agency. However, we do maintain reports of bullying incidents disaggregated at the state level by school year, and would be able to provide these to you for the three most recent collection years if you would like. Please advise.

Thank you,
Judy

Judith Cutler
Investigator / Public Records Officer
Vermont Agency of Education
219 North Main Street, Suite 402
Barre, VT 05641
Desk: (802) 479-1760
Email: Judy.Cutler@vermont.gov

My email address has changed. It is now Judy.Cutler@vermont.gov. Please update your contact lists accordingly.

From: Lola Duffort [<mailto:lola.duffort@rutlandherald.com>]
Sent: Wednesday, February 03, 2016 2:42 PM
To: Brackin, Stephanie
Subject: Public records request: bullying data

Hi Stephanie,

This is a public records requests pursuant to 1 V.S.A. §§ 315-320 for the data collected by the Agency of Education from school districts statewide each year regarding the number of reported bullying incidents and the number of verified bullying incidents. I would like the three most recent years for which the data have been collected, and I would like the data disaggregated by school district and by school year.

Thanks,

Lola Duffort
Rutland Herald
Education reporter
802 774 3027 (office)
802 417 7486 (cell)
@LolaDuffort

Jay Diaz

From: Jay Diaz <jdiaz@aclvt.org>
Sent: Wednesday, June 08, 2016 2:21 PM
To: 'Glennon, Greg'
Subject: RE: Reply to request for additional information

Greg:

Based on your responses, it is very difficult to understand whether the Agency has internal access to bullying data for each of Vermont's public schools.

We are trying to determine whether the AOE has the records that Ms. Duffort seeks, and it is the AOE's affirmative duty to assist us in making that determination.

The records she seeks would be any records showing the number of bullying incidents or complaints for a particular public school and/or the number of verified bullying incidents or complaints for a particular public school.

Does the AOE have such records?

Having an example data table would make it much easier to understand what the AOE has in its possession and what it does not. Please send me one of the database tables of granular data you discussed below so I can better understand what we are talking about.

Thank you.

Sincerely,

Jay

From: Glennon, Greg [mailto:Greg.Glennon@vermont.gov]
Sent: Tuesday, May 31, 2016 10:52 AM
To: 'jdiaz@aclvt.org'
Subject: RE: Reply to request for additional information

Jay,

All information is pulled into the state-level database for the purposes of running the state-level report. The state-level database does not include pre-built district- or school-level reports. Since the CIRS software sent out to each school/district includes school-level reports that may be run individually by school personnel, the AOE has no need to recreate these reports in the state-level database.

While the granular incident data persist in the state-level database, they reside in separate database tables. There are no sorting or searching capabilities that would enable the creation of school-level reports. As we have previously explained, in order for school- or district-level reports to be generated from the state-level database, it would require AOE staff to develop/create new queries and reports.

We recommend that requestors contact schools directly for this information as they are the custodians of these school level reports.

Exhibit BB



State of Vermont
219 North Main Street, Suite 402
Barre, VT 05641
education.vermont.gov

[phone] 802-479-1030
[fax] 802-479-1835

Agency of Education

July 1, 2016

ACLU of Vermont
Jay Diaz, Staff Attorney
137 Elm Street
Montpelier, VT 05602

RE: Appeal of Public Record Request Denial

Dear Jay:

I write in reply to your appeal (dated June 22, 2016) of the denial of your request for public records on behalf of Ms. Lola Duffort, which you received on June 16, 2016. For all of the reasons set forth in previous correspondence between you and Greg Glennon of the Agency of Education (AOE) and for the reasons set forth herein, the AOE, pursuant to 1 V.S.A. § 316(i), chooses to exercise its discretion to not create a new set of public records, which is what your request would require the AOE to do. Accordingly, I am affirming the denial of your request for public records on behalf of Ms. Lola Duffort (dated June 16, 2016).

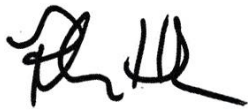
In addition, the records that you are requesting for creation and production are very sensitive. Due to the small cell size(s) of any production, there is a substantial risk of identifying any number of our students. Federal law prohibits this. Recent correspondence between the Family Policy Compliance Office of the United States Department of Education and AOE make it clear that AOE, as Vermont's State Education Agency, must make this threshold determination, by conducting its own analysis. *See* Attachment A, letter to Brian Townsend (dated April 24, 2014). AOE's previous correspondence with you on this subject has outlined, in painstaking detail, the reasons why production of these records you wish for AOE to create would violate Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), in our reasoned judgment and discretion. Vermont's student population is very small, and reporting out the data you are requesting simply is not possible or permissible, due to very real risk of identifying students, through any publication.

I am also surprised that the Vermont ACLU is pursuing a request for records that, if created and produced, would seriously erode the privacy of (very sensitive) student level data. Last year, the ACLU supported legislative efforts by AOE to expand privacy protections of student records. We were pleased to promote legislation that sought to close an existing gap in the protection of student level data that presently exists between the Children's Online Privacy Protection Act (COPPA) (15 U.S.C. §§ 6501–6506) and FERPA.

Allen Gilbert the (former) Vermont ACLU Executive Director testified favorably about this bill during the 2015 session. We continue to promote this legislation and seek member sponsorship in the General Assembly.

I hope that the ACLU may reconsider its position on this issue, and perhaps resume its previous posture as a collaborative partner with AOE on the very serious issue of ensuring the privacy of student records.

Sincerely,

A handwritten signature in black ink, appearing to read 'RH', with a long horizontal stroke extending to the right.

Rebecca Holcombe
Secretary of Education

cc: James Morse, President, Vermont ACLU

