



ADMINISTRATIVE PROCEDURE	
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<i>Review Date</i> 2019	<i>Page</i> 1 of 17
<i>Contact Person/Department</i> Human Resources Administrator	<i>Identification</i> HR-4011

ONTARIO HUMAN RIGHTS CODE: PREVENTION AND RESOLUTION OF EMPLOYEE DISCRIMINATION AND HARASSMENT

1.0 PURPOSE

Trillium Lakelands District School Board is committed to providing a non-discriminatory and harassment free working environment in which all persons are treated with respect and dignity.

Discrimination and harassment, under the Ontario Human Rights Code, is based on legislated prohibited grounds related to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability, and will not be tolerated. Harassment and/or discrimination in any aspect of employment is strictly prohibited.

This procedure is intended to prevent discrimination and harassment through greater responsiveness to their deleterious effects and to ensure that human rights complaints are dealt with quickly and effectively through consistently applied policy and procedures. Nothing in this procedure denies or limits access to other avenues of redress such as an application to the Ontario Human Rights Tribunal.

This procedure applies to all employees of the Board, wherever a work-related function is performed

2.0 REFERENCES AND RELATED DOCUMENTS

2.1 Relevant sections of Education and Employment Statutes and Regulations of Ontario include:

- a) Ontario Human Rights Code
- b) *Toby's Act* (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression) 2012
- c) *Occupational Health and Safety Act* (Violence and Harassment in the Workplace), 2010 (amended) Section 32.01 – 32.07
- d) *Education Act*: Section 301; *Safe Schools Act*: Section 283-CEO; Section 264 – Duties of a Teacher; Section 265 – Duties of a Principal
- e) Ontario Schools Code of Conduct
- f) *Municipal Freedom of Information and Protection of Privacy Act*

- g) Criminal Code of Canada
- h) The following Acts and Regulations:
 - *Ontario College of Teachers Act* and Regulations
 - *Ontario College of Social Work and Social Service Work Act* and Regulations
 - *Ontario College of Speech Language Pathologists and Audiologists Act* and Regulations
 - *Ontario College of Psychologists Act* and Regulations
 - *Teaching Profession Act*
 - Ontario College of Early Childhood Educators

2.2 Related Board Policies and Procedures are:

- a) Code of Conduct Policy OP-6020 and Procedure OP-6021
- b) Ontario's *Occupational Health and Safety Act*: Prevention and Resolution of Workplace Harassment Policy HR-4030 and Procedure HR-4031
- c) Progressive Discipline Procedure HR-4535
- d) Appropriate Use of Information/Communication Technology and Technology Services BU-3035 and Procedure BU-3036
- e) Volunteer Helpers in School Policy ES-5000 and Procedure ES-5001
- f) Ontario's *Occupational Health and Safety Act*: Prevention and Resolution of Violence in the Workplace Policy HR-4521 and Procedure HR-4522
- g) School Councils Policy OP-6015 and Procedure OP-6016;
- h) Safe Schools: Physical Intervention Guidelines for Responding to Injurious and Self Injurious Behaviour of Students Policy OP-6550 and Procedure OP-6551
- i) Responding to Student Violence towards Staff Policy HR-4519 and Procedure HR-4520
- j) Board Emergency Preparedness Policy BD-2070 and Procedure BD-2071
- k) Employee Assistance Program Policy HR-4005 and Procedure HR-4006
- l) Health and Safety Policy BU-3050
- m) Video Surveillance Policy OP-6025 and Procedure OP-6026

2.3 Union/Federation Collective Agreements, Employee Terms of Employment and Personal Services Contracts.

3.0 TERMS AND DEFINITIONS

3.1 DISCRIMINATION IN EMPLOYMENT

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. .

3.2 HARASSMENT IN EMPLOYMENT

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by any other employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

3.3 SEXUAL HARASSMENT IN THE WORKPLACE

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by any other employee because of sex, sexual orientation, gender identity or gender expression.

3.4 WORKING AND LEARNING ENVIRONMENT

The working and learning environment is any place where employees, students and other users perform work or work-related duties or functions. Schools and school-related activities, such as extracurricular activities and excursions, comprise this environment, as do Board offices and facilities. Conferences and training sessions fall within the ambit of this policy, as does the Board's courier system, fax, e-mail, phones and mailboxes.

3.5 BALANCE OF PROBABILITIES

The Balance of Probabilities is a standard of proof, based upon the weighing of evidence to determine the most appropriate judgment. It is often distinguished from another standard of proof, "beyond a reasonable doubt", used in the criminal justice system.

3.6 STANDARD OF PROOF

A Standard of Proof is used to make judgments in legal proceedings. For purposes of this Procedure, a civil standard of proof will be used; that is, proof on the balance of probabilities.

This standard will be objective. It will not be sufficient for a complainant to prove that s/he found the alleged conduct unwelcome. The complainant must demonstrate that the conduct itself was harassment/discrimination, based on an objective assessment of that conduct (i.e. would another reasonable person, in the same situation, find the conduct to be harassment/discrimination?).

3.7 THRESHOLD ASSESSMENT

A threshold assessment is an initial evaluation conducted by the Human Resources Administrator (or designate), which is used to determine whether an incident is covered by this policy/procedure and, if so, whether it is sufficient to warrant formal investigation.

3.8 EMPLOYEE

Employee under this procedure refers to any employee of Trillium Lakelands District School Board.

3.9 COMPLAINANT

Complainant under this procedure refers to any employee who believes that s/he is being harassed or discriminated against.

3.10 RESPONDENT

Respondent under this procedure refers to any employee who is accused of the harassing or the discriminatory behaviour.

3.11 OTHER USERS

The words “other users” include all persons, who are neither students nor employees, while on Board premises or attending Board or school programs/functions at other premises or in a business/social community relationship with the Board.

3.12 DELEGATION

An individual or group with a designated speaker may be a delegation to the Board. Please refer to Trillium Lakelands District School Board’s Procedural By-law #16, available through the Director’s Office.

4.0 ADMINISTRATIVE PROCEDURE

4.1 GENERAL

Because every person has the right to work in a workplace environment which promotes equal opportunities and prohibits discriminatory practices, the Board will not tolerate discrimination or harassment and will take all reasonable steps to prevent it and, where it has occurred, to respond decisively and effectively.

4.1.1 APPLICATION

- a) This Procedure applies to employees of Trillium Lakelands District School Board only.
- b) If an employee has a complaint against another user, the employee may contact the appropriate manager/supervisor who shall investigate.
- c) If another user has a complaint against an employee, the other user may contact the appropriate manager/supervisor, who may follow the procedures set out in the Progressive Discipline Procedure HR-4535, if applicable.

- d) The rights of students to a respectful working and learning environment, free from discrimination and/or harassment, are dealt with in 4.4.1 of this Procedure.
- e) Employees have the right to request union, federation, association representation at any time in the process.

4.1.2 REPORTING DISCRIMINATORY AND HARASSING BEHAVIOUR

All those who are covered by this Procedure have a right to access the dispute resolution processes.

4.1.3 OTHER AVENUES FOR RESOLVING DISPUTES

These Procedures provide a mechanism for dealing with complaints of discrimination and/or harassment occurring in the working and learning environment. Nothing in these Procedures denies or limits access to other avenues of redress available under the law or through the filing of a grievance or through progressive discipline. In such a case, this process may cease until the parties and their respective representatives have met with the Human Resources Administrator (or designate) to determine which dispute resolution process will proceed and which one(s) will be stayed pending completion of the chosen process.

4.1.4 WHO MAY INITIATE A COMPLAINT

Trillium Lakelands District School Board's employees have access to the complaint procedures. Employees who believe that they have been subjected to discrimination and/or harassment have a responsibility to report the discrimination and/or harassment.

4.1.5 TIMELINES FOR INITIATING A COMPLAINT

All reports must be filed within six months of the most recent instance of alleged discrimination and/or harassment. A report outside this time frame may be considered by consulting the principal or appropriate supervisor. Formal Complaints filed outside this time frame may be considered by consulting the Human Resources Administrator (or designate).

4.1.6 CONFIDENTIALITY

It is the duty of the supervisory and managerial personnel to maintain confidentiality in the complaint process. All complainants, respondents, witnesses and other persons involved with the complaint processes under these Procedures also have a responsibility to ensure that all information related to this process remain confidential. Witnesses should be informed that all administrators and parties have an obligation to maintain confidentiality but that information will be provided to the parties in order for the parties to reasonably respond and for investigators to conduct a full and thorough investigation

Notwithstanding the above, procedural fairness requires that the respondent to a complaint be apprised of the complaint and by whom it has been made so that they have an opportunity to respond to the allegations. Similarly the complainant must have an opportunity to respond to information provided by the Respondent. This may require the disclosure of witness names and statements to the parties.

The Board may be required to provide information obtained during an investigation to an outside agency that has the right to require information otherwise protected by the Municipal Freedom of Information and Protection of Privacy Act.

4.1.7 RECORDS

All correspondence and other documents generated under these Procedures must, subject to the Municipal Freedom of Information and Protection of Privacy Act, be marked "**PRIVATE AND CONFIDENTIAL**" and be stored in a locked and secure file in the Human Resources Department. Access to the files is limited to the Human Resources Administrator (or designate). Where an investigation is completed and the determination made that the complaint was bona fide but not justified, the materials will be kept for a period of two years. In all other circumstances, all correspondence relating to the matter will remain with the Human Resources Department indefinitely.

4.1.8 MISUSE OF THE COMPLAINT PROCEDURES

If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, the complaint process may discontinue and disciplinary action may occur.

4.1.9 REPRISALS

Alleged reprisals shall be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of discrimination and/or harassment.

4.2 PRE-STEP TO RESOLUTION (OPTIONAL STAGE)

All employees may opt to forego the Pre-Step stage. The first step in this optional stage is to inform the individual that his/her behaviour is discriminatory and/or harassing and must stop immediately. Many disputes can be resolved quickly and effectively using this approach. Supervisory and/or managerial personnel may attempt to provide support to both parties, if asked, in order to resolve the incident prior to initiating the informal stage of this procedure.

4.3 INFORMAL COMPLAINT (OPTIONAL STAGE)

- a) Supervisory and managerial personnel may become aware of discrimination and/or harassment in the working or learning environment in different ways. They may observe discrimination and/or harassment directly or receive a report from the individual affected. A speedy resolution can prevent escalation and further negative consequences while promoting restoration of a healthy learning and working environment.
 - b) Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. Employees may first attempt Informal Resolution as a means of resolving issues.
 - c) Supervisory or managerial personnel, as well as union/federation representatives may attempt to facilitate an informal resolution by:
 - i) suggesting that the complainant confront the problem by making it clear to the individual alleged to have engaged in discrimination and/or harassment that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;
 - ii) informing the individual of the complainant's concern regarding the alleged discrimination and/or harassment and the Board's expectation for appropriate behaviour;
 - iii) providing a copy of the Board's Policy and Procedure on Employee Discrimination and Harassment Prevention and Resolution and/or other relevant Board policies to the individual alleged to have engaged in the discrimination and/or harassment;
 - iv) obtaining a commitment that the behaviour will stop; and
 - v) following up with the complainant to ensure that the behaviour has stopped.
 - d) In cases where an informal plan of action is implemented, supervisory and managerial personnel shall follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure that the discrimination and/or harassment has stopped.
 - e) Where disputes are resolved informally, there will be no formal reports about such disputes. Every effort will be made to protect the privacy of individuals.
 - f) For informal complaints, where the parties are members of a union, federation, middle and senior manager groups or principals' council, a resolution facilitated by the appropriate representative(s) will be acceptable to the Board, if acceptable to the parties.
 - g) At any time during the Informal Resolution process, the Complainant and Respondent may mutually agree to drop the complaint.
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4.4 FORMAL COMPLAINT (REQUIRED STAGE IF NOT RESOLVED PREVIOUSLY)

4.4.1 INITIATING A COMPLAINT

- a) Employee complainants should contact their appropriate supervisor. Employee complainants should also consider contacting a colleague, their union, federation, professional association, middle or senior management representative. If an employee requires assistance in completing the formal complaint form (Appendix A), another individual such as a colleague, their union, federation, professional association, or middle and senior management representative may assist the complainant in completing the form.
- b) If the supervisor is the party alleged to be responsible for the discrimination and/or harassment or alleged to condone the discrimination and/or harassment, the complaint should be reported to the appropriate manager above the supervisor. Employee respondents may wish to contact the appropriate supervisor, a colleague, union, federation, professional association, or middle and senior management representative. For assistance and representation throughout the complaint process, both employee complainants and employee respondents are referred to the list in Section 4.4.3 below.
- c) The rights of students to a respectful working and learning environment, free from discrimination and/or harassment, are dealt with under other appropriate policy, legislation or regulations including but not limited to Codes of Behaviour, *the Education Act*, Section XIII - *Behaviour, Discipline and Safety* and Provincial Student Code of Conduct. Students should contact their vice-principal, principal, or, where appropriate, their school superintendent, for clarification on the process to be followed.
- d) The Human Resources Administrator (or designate) shall have the discretion to refuse to investigate a formal complaint where, in the opinion of the Human Resources Administrator (or designate), the complaint has not been made in good faith, or where the complaint does not fall under these procedures.
- e) Supervisory and managerial personnel who are contacted shall follow the procedures set out in Section 4.5 – Procedures for Resolving a Complaint.

4.4.2 RESPONDENTS TO A COMPLAINT

Individuals who are named as respondents in a formal complaint have a right to a written copy of the Formal Complaint Form (Appendix A) within three (3) working days of the Formal Complaint being filed. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct. Respondents who choose to respond to the allegations must complete and return their response within five (5) working days of their receipt of the written copy of the Formal Complaint to the Human Resources Administrator (or designate).

4.4.3 ASSISTANCE FOR COMPLAINANTS, RESPONDENTS AND WITNESSES

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Individuals, who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support:

- a) union/federation/professional association;
- b) professional support staff representative;
- c) employee or colleague;
- d) trained resource person;
- e) parent/guardian/family member;
- f) translator/interpreter (if necessary).

4.4.4 THRESHOLD ASSESSMENT

- a) All formal reports filed under this Procedure shall be subject to a threshold assessment within five (5) working days of receipt of the Formal Complaint by the Human Resources Administrator (or designate) to determine whether the alleged conduct would, if proven, meet the definition of discrimination and/or harassment.
- b) If the Human Resources Administrator (or designate), following this threshold assessment, determines that the report filed:
 - i) would not, if true, meet the definition of discrimination and/or harassment;
 - ii) does not provide sufficient details of the alleged discrimination and/or harassment, provided the complainant is given notice that insufficient details have been provided and is given reasonable time to provide sufficient particulars of the alleged conduct details; or
 - iii) is vexatious, frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of the Procedure,

the complainant and respondent shall be so advised. The complainant or respondent still may pursue other avenues for resolution.

- c) Where allegations relate to objectionable behaviour, they shall be addressed using the appropriate Board policy and procedure (i.e., Workplace Harassment Policy HR-4030 and Workplace Harassment Procedure HR-4031). Nothing in this Procedure shall prevent a complainant from making a complaint to the Ontario Human Rights Tribunal.
- d) In all cases where the Human Resources Administrator (or designate) has conducted a threshold assessment to determine that a formal complaint should proceed, the Human Resources Administrator (or designate) shall appoint the appropriate investigator to take action to resolve a formal complaint under this Procedure.

4.5 PROCEDURES FOR RESOLVING A FORMAL COMPLAINT

In all cases, supervisory and managerial personnel will endeavour to take action to resolve any alleged or suspected situations involving discrimination and/or harassment.

4.5.1 FORMAL INVESTIGATION AND RESOLUTION PROCESS

- a) Formal complaints require an investigation of the complaint allegations. The Standard of Proof to be applied is the balance of probabilities. Investigators will be chosen by the Human Resources Administrator (or designate). If the respondent declines to participate in the formal investigative process, the investigation shall proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.
- b) In a Formal Investigation, the Human Resources Administrator (or designate) shall ensure that the following steps are taken as soon as possible:
 - i) take appropriate measures to ensure the safety of the complainant;
 - ii) notify the complainant, the respondent and witness(es) that they are entitled to support and assistance throughout the process;
 - iii) ensure that the respondent has a copy of the complaint within three (3) working days;
 - iv) provide an opportunity for the respondent to complete and return their response within five (5) working days of their receipt to the Human Resources Administrator (or designate);
 - v) assign an investigator to the case;
 - vi) inform the complainant and respondent about who will be conducting the investigation.
- c) In a Formal Investigation, the investigator (as assigned by the Human Resources Administrator) shall:

- i) separately meet with the complainant (first) and the respondent (second) within **fifteen (15)** working days of the receipt of the complaint. The purpose of this initial meeting is to ensure that both parties understand the particulars of the complaint and the process of the investigation. The investigator will obtain the names of witnesses and other persons that the complainant and the respondent believe may be relevant;
 - ii) interview the respondent so that the respondent can reply fully to allegations made against him/her, including dates, times, locations;
 - iii) interview the named witnesses;
 - iv) interview other persons, not named, who may be able to contribute relevant information to the investigation;
 - v) complete the interviews as expeditiously as possible;
 - vi) come to a conclusion about whether a specific incident did or did not occur based on a balance of probabilities;
 - vii) review findings orally with the complainant;
 - viii) review findings orally with the respondent;
 - ix) investigate further, any additional information provided during the review of findings;
 - x) share results of final investigation orally with the complainant;
 - xi) share results of final investigation orally with the respondent;
 - xii) complete the investigation within thirty (30) days of the meetings outlined in (i) above or apply to the Director of Education for an extension of the timelines;
 - xiii) complete the final written report, including specific recommendations and the rationale for further action to resolve the matter;
 - xiv) submit final report to the Director of Education, Complainant and Respondent.
- d) The Director of Education will:
- i) share the investigator's report with appropriate members of Executive Council;
 - ii) consider the recommendations and take appropriate actions to resolve the situation;
 - iii) provide a written response to the complainant and the respondent outlining the actions that will be taken and the rationale for such actions. At any time during the Investigation, if the Complainant and Respondent can reach a mutually agreed upon resolution supported by the Investigator, the Formal Investigation shall cease and the matter declared resolved.

4.5.2 OUTCOMES IN FORMAL INVESTIGATIONS

In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records, unless the complaint is found to be trivial, vexatious or an abuse of power. However, if there is a need to restore a positive learning or working environment, appropriate steps shall be taken by the Human Resources Administrator (or designate) which might include:

- a) counseling;
- b) application of strategies to restore a positive learning/working environment;
- c) mediation;
- d) specific training;
- e) workshops for the staff and/or others in the school/workplace regarding their rights and responsibilities;
- f) permanent separation of respondent and complainant from each other;
- g) restorative measures;
- h) monitoring of the work environment.

4.5.3 DISCIPLINARY ACTIONS - EMPLOYEE RESPONDENTS

The appropriate supervisor or manager may impose discipline as appropriate and as consistent with the seriousness of the findings.

The principles of progressive discipline will be applied in dealing with disciplinary actions under this policy. These would include the following possibilities:

- a) verbal warning;
- b) written reprimand;
- c) suspension;
- d) demotion and/or transfer;
- e) dismissal from employment with the Board;
- f) monitoring of the work environment.

4.5.4 MEDIATED RESOLUTION

- a) Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful manner. It provides the opportunity to generate a variety of options for resolution and contributes to restoring the working relationship between the parties.
- b) Where there is already a formal complaint being investigated under these procedures, at any time during the investigation, the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution.

- c) Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or attain a trained mediator from the Board's list of approved mediators when the parties have expressed an interest in a mediated resolution.
- d) Meetings required for mediation sessions shall be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent and the mediator.
- e) When matters are resolved through mediation, the complainant and the respondent will sign a plan of action for resolution outlining the terms to which the parties have agreed. No plan will include violations of any Collective Agreement/Terms and Conditions of Employment. Employees are strongly encouraged to seek advice from their union, federation, or professional association in this regard.
- f) Mediation is voluntary and the complainant or the respondent may choose to withdraw at any time.

4.6 APPEAL PROCESS

- a) Should the Director choose not to follow the recommendations provided by the investigator, or make modifications to the recommendations that are unacceptable, either party may appeal upon receipt of the Director's decision.
- b) Such appeals must be made to the Board within 30 working days from the receipt of the decision. In order to attend the in-camera session, delegates must follow the applicable rules (available from the Director's Office).
- c) After hearing the appeal, the Board of Trustees will make a final decision on the matter.

5.0 APPENDICES

- 5.1 Appendix A - Discrimination and/or Harassment - Formal Complaint Form
- 5.2 Appendix B - Employee Discrimination and/or Harassment Flowchart



PRIVATE AND CONFIDENTIAL

DISCRIMINATION AND/OR HARASSMENT – FORMAL COMPLAINT FORM

Discrimination and/or Harassment
was directed towards:

_____ *(name of Complainant)*

_____ *(worksite or home address)*

_____ *(position)*

directed by:

_____ *(name of Respondent)*

_____ *(worksite or home address)*

_____ *(position)*

PRE-STEP: Attempted? Yes No Optional

Date Complainant informed Respondent that behaviour was unwelcome: _____

INFORMAL RESOLUTION STAGE: Attempted? Yes No

Date Complainant reported behaviour to his/her supervisor: _____

Name/title of Complainant's supervisor: _____

Describe the informal resolution attempt and why it failed, if applicable: _____

FORMAL COMPLAINT:

Date of alleged discrimination and/or harassment: _____

Description of alleged discrimination and/or harassment (use verbs to describe each bullet):
use additional sheet(s) if necessary

- _____
- _____

- _____
- _____
- _____
- _____

History:

1. Has the complaint been reported previously by the complainant? Yes No
2. If yes, to whom? _____

(name)

(worksite or home address)

(position)
3. When was it reported? _____
4. What actions were taken, if any? _____

5. Are you willing to participate in the mediation process set out in Section 4 of this Procedure?
 Yes No

Employees are strongly encouraged to seek advice from their union, federation, or professional association.

Complainant(s) Signature(s): _____ Date: _____

Supervisor(s) Signature(s): _____ Date: _____

The information contained in the form is confidential and reasonable steps will be taken to maintain confidentiality in accordance with the provisions of the **Municipal Freedom of Information and Protection of Privacy Act**. This form and any attachments will be copied to the respondent(s) named above, in accordance with the Formal Complaints Process.

INSTRUCTIONS FOR HANDLING THIS FORM

Place this form in a sealed envelope marked "PRIVATE AND CONFIDENTIAL" and forward to the Human Resources Administrator (or designate).

