

Administrative Procedure

A.P. 8-4



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Subject: Workplace Harassment

1.0 GENERAL -

All those covered by the Workplace Harassment Policy (B.P. 8-4) have a right to report harassment or evidence of harassment incidents and are entitled to have access to the dispute resolution processes. *Every attempt shall be made to resolve matters through an informal resolution.* The first step is to inform the individual that his/her behaviour is unwelcome and must stop immediately. Many disputes can be resolved quickly and effectively using this approach. In order to stop objectionable behaviour, supervisory and managerial personnel must address and attempt to resolve disputes in a timely fashion.

These procedures provide a mechanism for implementing the Workplace Harassment Policy. 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 shall cease until the parties and their respective representatives have met with the Superintendent of Human Resources to determine whether a formal investigation will proceed or whether the complainant wishes to proceed under another process. Multiple processes shall not be permitted to proceed concurrently, although informal dispute resolution attempts shall be permitted at any time with the agreement of the Board and the parties.

The following steps represent the process for resolving a harassment complaint through the Board. The complainant is free to commence the complaint procedure at the formal or informal stage outlined herein. The complainant is also free to discontinue a complaint at any time. The Board, however, may deem the circumstances worthy of further investigation and initiate its own action.

DEFINITIONS:

1. **Balance of Probabilities** means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happens is more than 50%. So mathematically proof on a balance of probabilities is 50.1% likelihood of something having occurred.
2. **Gender Identity** is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.
3. **Gender Expression** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.

4. **Workplace Harassment** means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or workplace sexual harassment; (“harcèlement au travail”)

5. **Workplace Sexual Harassment** means engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome; (“harcèlement sexual au travail”)

1.1 Who May Initiate a Complaint?

All employees who are included under section 3.0 To Whom Does This Policy Apply in the Workplace Harassment Policy have access to the complaint procedures. Individuals who believe that they are targets of harassment may initiate a complaint. In addition, those who have witnessed harassment directly, have received reports of harassment incidents or have reasonable grounds to suspect that harassment is occurring, may initiate a complaint.

Each employee has the right and is encouraged to contact his/her Union for assistance and advice throughout this process. Non-unionized employees are encouraged to consult with the Superintendent of Human Resources.

1.2 Timelines

All complaints must be reported within one (1) year of the most recent alleged harassing behaviour. A complaint outside this time frame may be considered by consulting the Superintendent of Human Resources.

1.3 Confidentiality

It is the duty of the supervisory, managerial personnel to maintain confidentiality in the complaint process. All complainants, respondents and other persons involved with the complaint processes under these procedures will ensure that all matters remain confidential. Witnesses should be informed that supervisory and managerial personnel, in obtaining a statement, will maintain such statement in strict confidence, subject to their ability to conduct a full and thorough investigation.

Notwithstanding the above, procedural fairness requires that the respondent to a complaint be apprised of the nature of the complaint and by whom it has been made so that they have an opportunity to respond to the allegations. 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, such as police services, court or tribunal, which has the right to require information otherwise protected by the *Municipal Freedom of Information and Protection of Privacy Act*.

1.4 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.

1.5 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.

1.6 Reprisals

Reprisals against individuals because they have reported a complaint are strictly forbidden. Alleged reprisals shall be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of harassment.

2.0 **INFORMAL RESOLUTION**

2.1 Who May Initiate a Complaint?

All those individuals who are included under the section To Whom Does This Policy Apply under the Workplace Harassment Policy have access to the complaint procedures. Individuals who believe that they have been subjected to harassment may report such behaviour. In addition, those who have witnessed directly, or have reasonable grounds to suspect that harassment is occurring, may initiate a report. Anonymous reports will not be entertained for dispute resolution under these procedures. Third party disclosures will only go forward (to the formal stage) with the alleged victims consent.

2.2 Supervisory and Managerial Responsibilities

Reports shall be made to a persons immediate supervisor In schools, this means the Principal or Vice Principal. Supervisory and Managerial personnel may become aware of workplace harassment in the working or learning environment in different ways. They may observe harassment directly or receive a report from the individual affected. Supervisory, managerial personnel may also receive reports from third parties.

It is important that supervisory, managerial personnel pay attention to symptoms arising out of possible objectionable behaviour such as reduced productivity, changes in behaviour, absenteeism, requests for transfers or rumours. Without assistance, the targets of objectionable behaviour may be embarrassed or reluctant to report a situation.

A speedy resolution of a complaint can prevent escalation and further negative consequences while promoting restoration of a healthy learning and working environment. Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. The Board shall require supervisory, managerial personnel, as well as union representatives, to first engage in Informal Resolution as a means of resolving issues.

2.3 Informal Resolution Steps

Supervisory or managerial personnel, as well as union representatives, will attempt to facilitate an informal resolution by:

- suggesting that the complainant confront the problem by making it clear to the individual alleged to have engaged in workplace harassment that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;
 - informing the individual of the complainant's concern regarding the alleged objectionable behaviour and the Board's expectation for appropriate behaviour, providing a copy of the Workplace Harassment Policy and/or other relevant Board policies, and obtaining a commitment that the behaviour will stop; and
 - following up with the complainant to ensure that the behaviour has stopped.
- Supervisory and managerial personnel may initiate mediation by a neutral third party.

2.4 Information Resolution Follow-up

In cases where an informal plan of action is implemented, supervisory and managerial personnel will follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure that the harassment has stopped. All notes and/or information prepared in the course of the informal complaint process will be forwarded to the Human Resources Department for storage in a confidential workplace incident file separate from the personnel file. Only a record of negative consequence, warning or caution will be placed in the respondent's personnel file.

3.0 **FORMAL COMPLAINT PROCEDURES**

3.1 Initiating a Formal Complaint

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally. The Assistant to the Director – Human Resources will have the discretion to refer a formal complaint to the appropriate supervisor and the parties if he/she is not satisfied that reasonable efforts have been made to resolve the dispute informally.

Employee complainants should contact their appropriate supervisor, a colleague, and union or association representative. If an employee requires assistance in completing the formal complaint form, another individual such as a colleague, union or association representative should make the complaint on the employee's behalf. If the supervisor is the party alleged to be responsible for the objectionable behaviour or alleged to condone the objectionable behaviour, the complaint should be reported to the appropriate manager above the supervisor. Employee respondents may wish to contact the appropriate supervisor, a colleague, and union or association representative. For assistance and representation throughout the complaint process, both employee complainants and employee respondents are referred to the list in section 3.3 below.

Other user complainants should report the complaint to the appropriate supervisory or managerial personnel at the Board or, if they require assistance in reporting.

Other user respondents may also want to contact other appropriate personnel, for example, an employee of another organization may want to seek assistance and support from within that organization. For assistance and representation throughout the complaint process, both other user complainants and other user respondents are referred to the suggested support people listed in section 3.3 below.

The rights of students to a respectful working and learning environment, free from harassment, are dealt with under other appropriate policy, legislation or regulations including, but not limited, to the *Education Act* and the Ontario Schools Code of Conduct and codes of behaviour. Students should contact their principal, vice-principal or, where appropriate, their school superintendent, for clarification on the process to be followed.

3.2 Respondents to a Complaint

Individuals who are named as respondents in a complaint have a right to know in a timely manner in writing that they are the subject of a complaint, who the complainant is, what the allegations are and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct. Respondents will be given a copy of the complaint and given time to prepare a full and complete response to the allegations.

3.3 Assistance for Complaints, 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:

- parent/guardian/other caregiver;
- professional support staff;
- employee or colleague;
- trained resource person;
- union/association representative; and/or
- translator/interpreter (if necessary).

3.4 Threshold Assessment

All formal reports filed under the Workplace Harassment Policy will be subject to an immediate threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment.

If the Board, following this threshold assessment, determines that the report filed:

1. would not, if true, meet the definition of workplace harassment;
2. does not provide sufficient details of the alleged harassment, provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details; or is without sufficient grounds, frivolous or
4. has not been made in good faith or would, if investigated, constitute an abuse of the Workplace Harassment Policy;
3. the complainant shall be so advised in writing and no further action shall be taken under the Workplace Harassment Policy.

Where allegations relate to discrimination on the basis of a ground prohibited by the Ontario *Human Rights Code*, they shall be addressed using the appropriate Board policy.

3.5 Procedures for Resolving a Formal Complaint

In all cases, where the Superintendent of Human Resources has determined that the parties have made reasonable efforts to resolve the dispute informally, and has conducted a threshold assessment to determine that a formal complaint should proceed, he/she shall direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this policy.

3.5.1 Formal Investigation and Resolution

Formal complaints require an investigation of the complainant's allegations. Investigators will most often be the supervisory staff of the complainant and/or respondent unless such person(s) actively participated in the unsuccessful informal resolution process, in which case, an independent investigator shall be appointed. Where the complainant and the respondent have different reporting structures, supervisory and managerial personnel involved will determine who the appropriate person is to take responsibility for the investigation.

In a formal investigation, supervisory or managerial personnel who conduct the investigation shall ensure that the following steps are taken, as soon as possible:

1. Take appropriate measures to ensure the safety of the complainant;
2. Notify the complainant(s), the respondent(s) and witness(es) that they are entitled to support and assistance throughout the process;
3. Ensure that the respondent(s) have a copy of the complaint;

4. Interview the complainant(s) and/or the third party reporting the complaint;
5. Inform the respondent(s) of the allegations and provide an opportunity for response;
6. Interview the respondent(s);
7. Interview witness (es);
8. Come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities (the question of whether behaviour is objectionable will be assessed using objective standards);
9. Provide a written summary of the findings and conclusions to the complainant and to the respondent and give them an opportunity to respond to same; and
10. Take appropriate action(s) to resolve the situation.

If the respondent declines to participate in the formal investigative process, the investigation will still proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.

3.5.1.1 Standard of proof

The standard of proof to be applied is the balance of probabilities.

3.5.1.2 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. In cases where the complaint is found to be trivial, vexatious or an abuse of the process, in which case, the complainant may be subject to disciplinary action as outlined in section 3.5.1.3. However, if there is need to restore positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps will be taken to meet such needs.

Follow-up possibilities:

1. counselling for the parties;
2. application of strategies to restore a positive learning/working environment;
3. mediation;
4. specific training for the complainant or respondent;
5. workshops for the staff and/or others in the school/workplace regarding their rights and responsibilities;
6. permanent separation of respondent and complainant from each other; and/or
7. restorative measures.

3.5.1.3 Disciplinary Actions

Employee Respondents

The appropriate supervisor or manager may impose discipline as appropriate and consistent with the circumstances.

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

- verbal warning;
- written reprimand;
- suspension with pay;
- suspension without pay; or
- dismissal from employment with the Board.

Other User Respondents

Actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval and caution or warning, a revoking of permits or contracts, an issuing of a trespass warning, or other remedies as provided by the common law and/or the appropriate legislation. The involvement of the Superintendent of Human Resources is recommended in these cases.

3.5.2 Mediated Resolution

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.

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.

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. (In cases where mediation is sought, the department of the Board responsible for human resources management shall provide trained mediators who are acceptable to both parties.) Meetings required for mediation sessions will be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent and the mediator.

When matters are resolved through mediation, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. Supervisory and managerial personnel will ensure that the terms that the parties have agreed to have been met.

Mediation is voluntary and the complainant or the respondent may choose to withdraw at any time.

4.0 REVIEW

In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a request may be made to the Director of Education to convene a review. A reviewer will be appointed by the Director of Education.

The grounds for review are:

- the investigators did not comply with the procedures; or
- new evidence has become known after the final decision but before the expiry of the ten working days limitation period for requesting a review.

No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

The reviewer will report its findings to the Director of Education who will affirm or amend a final decision or require that a new investigation be undertaken.

5.0 REFERENCES/RELATED DOCUMENTS

Canadian Charter of Rights and Freedoms
Municipal Freedom of Information and Protection of Privacy Act
Ontario Human Rights Code
Ontario College of Teachers Act, 1996

6.0 RELATED FORMS

None