

Administrative Procedure

A.P. 8-22



Date: June 2010

Reviewed: June 2018

Subject: Workplace Violence

1.0 GENERAL

The Bruce-Grey Catholic District School Board (the “Board”) expects that any incidents of or threats of workplace violence will be dealt with promptly by all parties concerned. The Board expects that all incidents or threats of workplace violence will be investigated in a fair, consistent, thorough, and confidential manner.

These procedures provide a mechanism for implementing the Workplace Violence Policy B.P. 8-22 (“Policy on Workplace Violence”) and mechanisms for reporting and investigating incidents of workplace violence in compliance with Bill 168 of the Occupational Health and Safety Act. Nothing in these procedures denies or limits access to other avenues of redress available under the law or the filing of a grievance. In such a case, this process and the procedures 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 reporting incidents or threats of workplace violence to 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. **Domestic Violence** means a person who has a personal relationship with a worker – such as a spouse or former spouse, current or former intimate partner or a family member – may physically harm, or attempt or threaten to physically harm, that worker at work. In these situations, domestic violence is considered workplace violence.
3. **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.

4. **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.
5. **Sexual Violence** means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation.
6. **Workplace Violence.** The OHSA defines workplace violence as the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker. It also includes an attempt to exercise physical force against a worker in a workplace, that could cause physical injury to the worker; and a statement or behaviour that a worker could reasonably interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker [section 1].

This may include:

- verbally threatening to attack a worker;
- leaving threatening notes at or sending threatening e-mails to a workplace;
- shaking a fist in a worker's face;
- wielding a weapon at work;
- hitting or trying to hit a worker;
- throwing an object at a worker;
- sexual violence against a worker;
- kicking an object the worker is standing on such as a ladder; or
- trying to run down a worker using a vehicle or equipment such as a forklift.

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 are victims of workplace violence, including threats of violence, may initiate a complaint. In addition, those who have witnessed workplace violence directly, have received reports of workplace violence or have reasonable grounds to suspect that workplace violence may occur can 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 Assistant to the Director - Human Resources.

Reports shall be made to a person's immediate supervisor. In schools, this means to the Principal or Vice Principal.

1.2 Timelines

All complaints must be reported within one (1) year of the most recent incident or threat of workplace violence. A complaint outside this time frame may be considered by consulting the Assistant to the Director - Human Resources.

1.3 Confidentiality

It is the duty of the supervisory and 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, that 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 IDENTIFIABLE RISKS

Through an employee survey on workplace risk assessments, the Board has conducted a risk assessment and determined that a degree of risk for all Board employees exists for the following groups:

- Students on staff
- Staff on staff
- General Public (including parents) on staff

In an effort to control these identifiable risks, the Board has developed and implemented the following measures and procedures:

- *Emergency Response Plan*

- *Board Policy 6-27 Emergency Procedures in Event of Fire, Lockdown or Other Emergencies*
- *Board Policy 8-4 Policy on Workplace Harassment*
- *Board Policy 6-40 Safe Schools – Code of Conduct*
- *Administrative Procedure 6-40 Safe Schools – Code of Conduct*
- *Board Policy 6-43 Keeping our Kids Safe at School*
- *Board Policy 6-44 Safe Schools – Progressive Discipline and Promoting Positive Student Behaviour*
- *Board Policy 6-45 Policy on Bullying Prevention*
- *Board Policy 9-11 Physical Restraint of a Student*
- *Administrative Procedure 8-3(vi) Working Safety in Special Education*

3.0 IMMEDIATE ASSISTANCE

When workplace violence occurs or is likely to occur, employees are encouraged to act immediately and summon assistance. For threats of violence, assaults or other violence incidents, employees should contact their supervisory or managerial personnel, if possible, and/or CALL 9-1-1 immediately.

After requesting police involvement and the emergency situation is under the proper control, the particulars of the event will be recorded by the supervisor pursuant to the Formal Complaint Procedure described below.

4.0 INFORMAL RESOLUTION

Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. This process for dispute resolution applies to more subtle forms of workplace violence, for example, receiving threats of violence. The Board encourages supervisory and managerial personnel to first attempt Informal Resolution as a means of resolving these more subtle issues. If, at any time, it is determined that the issue being reviewed is an issue of “workplace harassment”, the violence related investigation will be terminated and the issue will be processed pursuant to the Workplace Harassment Policy (B.P. 8-4) and Procedures (A.P. 8-4).

Upon receiving a request, the Board’s supervisory or managerial personnel will meet privately with each of the parties involved to learn the details of the event(s). Informal complaints, where the parties are members of a union, association or members of the school community, a resolution facilitated by the appropriate representative(s) is recommended, if acceptable to the parties.

After listening to the verbal descriptions of the event(s) provided by the parties involved, supervisory or managerial personnel, as well as union representatives, may facilitate an informal resolution by:

- suggesting that the complainant confront the problem by making it clear to the individual that the violent behaviour or threats are not acceptable and by obtaining a commitment that the behaviour will stop;
- informing the individual of the concern regarding the behaviour, and the school’s expectation for appropriate behaviour and by providing a copy of the Workplace Violence Policy and/or other relevant Board policies and by obtaining a commitment that the behaviour will stop; and
- following up with the complainant to ensure that the behaviour has stopped.

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 behaviour has stopped.

All notes and/or other 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 the negative consequence, warning or caution will be placed in the respondent's personnel file.

5.0 FORMAL COMPLAINT PROCEDURE

5.1 Initiating a Formal Complaint

Where an incident or threat of workplace violence requires employees to summon immediate assistance and/or to implement any of the Emergency Response Plan, and/or the Lockdown Procedure, the formal complaint process shall be thereafter initiated as soon as possible.

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally. The Superintendent of Education/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.

To initiate a formal complaint, the Workplace Violent Incident Report Form must be completed.

Employee complainants should contact their appropriate supervisor, a colleague, union or association representative. If an employee requires assistance in completing the Workplace Violent Incident Report 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, 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 5.3 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 5.3 below.

The rights of students to a respectful working and learning environment, free from violence or threats of violence, 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.

5.2 Respondents to a Complaint

Individuals who are named as respondents in a complaint have a right to know in a timely manner 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.

5.3 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).

5.4 Threshold Assessment

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

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

- would not, if true, meet the definition of workplace violence;
- does not provide sufficient details of the alleged incident or threat at workplace violence, 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 trivial, has not been made in good faith or would, if investigated, constitute an abuse of the Workplace Violence Policy,

the complainant shall be so advised and no further action shall be taken under the Workplace Violence 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.

5.5 Procedures for Resolving a Formal Complaint

In all cases, where the Assistant to the Director - 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.

5.5.1 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. complete the Board's Violent Act in the Workplace Investigation Form and 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.

5.5.1.1 Standard of proof

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

5.5.1.2 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, without sufficient grounds or an abuse of the process, in which case, the complainant may be subject to disciplinary action as outlined in section 5.5.1.3. 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:

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

5.5.1.3 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 Assistant to the Director - Human Resources is recommended in these cases.

5.5.2 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.

6.0 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.

7.0 REFERENCES

Canadian Charter of Rights and Freedoms
Municipal Freedom of Information and Protection of Privacy Act
Ontario Human Rights Code
Ontario Occupational Health and Safety Act
Teaching Profession Act
Ontario College of Teachers Act, 1996

8.0 RELATED FORMS

Workplace Violence Incident Report Form
Violent Act in the Workplace Investigation Form